

MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

PERMITTING AND ENFORCEMENT COMMITTEE

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SACRAMENTO, CALIFORNIA

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

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Michael Paparian, Chairperson

Sal Cannella

Steven R. Jones

Jose Medina

STAFF

Mark Leary, Executive Director

Kathryn Tobias, Chief Counsel

Julie Nauman, Acting Chief Deputy Director

Scott Walker, Acting Deputy Director

Mark de Bie

Michael Bledsoe, Staff Counsel

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PROCEEDINGS

CHAIRPERSON PAPARIAN: Welcome, everybody. This is a meeting of the Permitting and Enforcement Committee.

I'd like to remind -- in fact I think I might have just heard one. I'd like to remind everybody to turn off your cell phones and pagers, or at least turn it to the vibrate mode, so that we're not interrupted during this meeting.

There are speaker slips in the back of the room. If anybody wishes to address an item, if you could fill out a speaker's slip and hand it to Ms. Farrell up here in the front, that would be very helpful.

Let's start out by establishing a quorum.

Secretary, call the roll.

SECRETARY FARRELL: Cannella?

COMMITTEE MEMBER CANNELLA: Here.

SECRETARY FARRELL: Jones?

COMMITTEE MEMBER JONES: Here.

SECRETARY FARRELL: Medina?

COMMITTEE MEMBER MEDINA: Here.

SECRETARY FARRELL: Paparian?

CHAIRPERSON PAPARIAN: Here.

And then I should check if anybody has any ex partes.

Mr. Jones?

1 COMMITTEE MEMBER JONES: No.

2 CHAIRPERSON PAPARIAN: Mr. Medina?

3 COMMITTEE MEMBER MEDINA: None to report.

4 CHAIRPERSON PAPARIAN: Mr. Cannella?

5 COMMITTEE MEMBER CANNELLA: None to report.

6 CHAIRPERSON PAPARIAN: And I'm up to date.

7 Over the past couple of weeks I've received quite
8 a few communications about the proposed C&D regs, from
9 those in support of the latest version and from those who
10 are opposed to the latest version or opposed to certain
11 sections of it.

12 I know that this has caused a lot of concern.
13 And I appreciate the time that the stakeholders have taken
14 in developing their comments and communicating those
15 concerns to me and to others.

16 I spoke to several people actually the day before
17 Thanksgiving about their either ongoing concerns or
18 ongoing technical issues involving the regs.

19 There are a few people I see here in the room who
20 are likely here for the regs. I would expect some more to
21 show up later this morning. And so we've actually
22 extended the normal time for this P&E Committee meeting to
23 assure that we have the time to hear the comments.

24 The Special Waste Committee, which normally meets
25 right after lunch, Mr. Jones has agreed to delay that

1 meeting until 3:00 o'clock. So that if we need the time
2 to go on through the lunch hour or after lunch, we'll have
3 it to address the C&D regs or address any of the other
4 items that might come up on our agenda.

5 I should check and -- do any of the other board
6 members have anything, any comments before we get started?

7 COMMITTEE MEMBER CANNELLA: I don't.

8 CHAIRPERSON PAPARIAN: Nope. Okay.

9 So I'll turn it over to Mr. Walker.

10 ACTING DEPUTY DIRECTOR WALKER: Thank you. Scott
11 Walker, Acting Deputy Director, Permitting and Enforcement
12 Division. I have several items for the Deputy Director
13 report.

14 First I'd like to update the Committee on our
15 Closed, Illegal and Abandon Site, or CIA Site, Solid Waste
16 Disposal Sites Program. We continue to get a lot of
17 really positive feedback from LEA's on this program.

18 It started in mid '91, and to provide assistance
19 to LEA's in investigation and enforcement of these sites.
20 We have over 2700 listed sites. Some of them are not real
21 sites, but there are many sites that are actual problems
22 that we need to look at and help the LEA's on. They're
23 basically everything other than the permitted facilities,
24 which we traditionally have had more emphasis on.

25 We've got in this category, the preregulatory

1 burn dumps has had a lot of interest. Legacy landfill
2 sites. And all different types of illegal disposal sites
3 that we encounter.

4 Many of these sites are in urban areas. And I'd
5 like to point out that we have over 400 of these sites in
6 L.A. County alone.

7 Public health and safety aspects: Exposed waste;
8 landfill gas; hazardous materials; lots of activity with
9 respect to brown fields development, which is development
10 over contaminated sites on our solid waste CIA sites.
11 Many of these sites are very old and poorly characterized
12 and have responsible parties that are uncooperative or of
13 limited resources.

14 The other aspect is that coordination with other
15 agencies can be very difficult because there's overlapping
16 jurisdictions, DTSC, Water Board. Even EPA gets involved
17 in some of these cases.

18 And the program also ties in at screen sites for
19 our cleanup programs, 2136 and farm and ranch. And those
20 programs provide a funding backup -- funding option backup
21 to clean up sites where there's no responsible party or
22 responsible parties are unable or unwilling to perform a
23 timely clean up.

24 We've had over 150 sites cleaned up under 2136
25 program and over 100 sites -- approximately 100 sites in

1 the farm and ranch program. A large number of other sites
2 get cleaned up by the responsible party.

3 I want to give you an example of challenges of
4 these CIA sites. We recently had a case in Monterey Park,
5 it's called the Cogan site. And this is a site that last
6 received wastes in late 1950's. And apparently because of
7 the rains that occurred in L.A., this site kind of opened
8 up a little so to speak. There were some crevasses and
9 some evidence of some air emissions, some odor complaints,
10 some indications of a potential landfill fire.

11 This happened two weeks ago where the local L.A.
12 County, LEA and Hazardous Materials Department responded
13 to odor complaints. And as a result, this problem is
14 clearly something that is a little more than a minor
15 situation. We right now are working with our LEA and
16 those agencies. The LEA's issued an order against the
17 property owner to take immediate action, within 7 days.
18 And we also have U.S. EPA's emergency response in the
19 background to deal with if we do have a fire on the site.
20 It's complicated, with the sampling and the analysis, to
21 really determine what's going on. But we do have all the
22 pieces together there. And our CIA program is evolving in
23 trying to help that.

24 And that gives you an example. You know, you
25 think of a site in the fifties, landfill site that --

1 well, you know, probably the decomposition process is
2 probably gone pretty much to completion. But these
3 sites -- we see things like this, old sites, something
4 happens, and a problem just gets triggered for a variety
5 of reasons. And we have to be able to respond. And
6 that's an example of a case where we've had to respond to.
7 And for the time being things seem to be being addressed
8 appropriately, and all the different agencies are all
9 working together. And without our closed, illegal, and
10 abandon sites program we'd really be hamstrung on trying
11 to get that situation -- get a handle on that situation.

12 The other thing I'd like to point out is that
13 similar to last February we plan to bring back an update
14 of the CIA sites program to the Board for, you know, just
15 to present our status of what we're doing. And we plan to
16 do that first quarter of 2003.

17 Another -- the second item I'd like to bring up
18 is I just want to convey to the Committee that as we
19 grapple with the State's budget crisis, we continue to be
20 faced in the division to have to do more with less. And
21 under these circumstances the P&E Division, we must
22 continue to reduce the backlog of regulation packages. We
23 had a lot of controversy with regulation packages. We've
24 made some progress last month. We clearly have a lot of
25 waste to go.

1 But this takes a lot of staff time on these
2 regulation packages that could otherwise be spent on
3 proactive compliance assistance to try to get at problems
4 before they happen. But also technical assistance and
5 training. And we'd also like to look more at the
6 strategic plan implementation, performance measures and in
7 that area. And so as we continue, we need to get a handle
8 on these reg packages so we can spend more time in those
9 other areas. And so I'll continue to be working with the
10 Committee to accomplish that so we can move on.

11 Finally, I'd like to just report that the Item C,
12 December Board Item 23, which is consideration of
13 Standardized Composting Permit for the Foster Farms manure
14 storage facility in Merced County was pulled by the LEA
15 late Wednesday.

16 I'd like to bring out a couple circumstances
17 surrounding this permit withdrawal and what we're doing to
18 respond.

19 They already have a standardized permit. And
20 this permit was driven by the LEA primarily to come back
21 in and to change some aspects of the operation. We
22 received this permit package very late, November 19th,
23 several days before the final posting of agenda items.
24 The package was clearly incomplete. There were major
25 omissions in this package that we're faced with. It

1 significantly strained our workload, and has also raised
2 some concerns over potential problems with regard to the
3 performance of the LEA.

4 This LEA was last evaluated in 1998. And, again,
5 I don't want to conclude that the LEA is not meeting their
6 statutory, regulatory performance requirements, but it
7 raises that concern. And so on that basis, we are -- or I
8 have directed staff to proceed with the evaluation process
9 of this LEA's performance triggered by these concerns over
10 the permit.

11 And upon conclusion of the evaluation we will
12 continue to inform the Board -- or the Committee of the
13 results and also options if they're needed for corrective
14 action. Again, we've not made -- you know, been able to
15 make any final determinations. But we feel the need to
16 look at this LEA and take a look at their program
17 performance.

18 So if there are no further questions -- or if you
19 have questions, I'd be happy to answer them. But that
20 concludes the presentation.

21 CHAIRPERSON PAPARIAN: I had just a -- well, I'll
22 let the other members ask first.

23 Any questions, Mr. Cannella?

24 COMMITTEE MEMBER CANNELLA: Particularly on the
25 issue you just talked about, the LEA.

1 At what point do you do the investigation -- or
2 the evaluation of an LEA? And then I saw one last week at
3 the meeting that we had for today, where it was obviously
4 incomplete. Why did we even have it on the agenda if it
5 wasn't complete? And what action -- what options do you
6 have to tell the person it's incomplete, the clock isn't
7 going to start running until it is complete? I've seen
8 more than one time where we've received agenda items that
9 were clearly incomplete, yet we received them and they
10 were scheduled for a hearing, and then at the last minute
11 they were pulled.

12 It seems to me that we ought to be able to do a
13 lot better job in ensuring that before our staff is
14 entertained with any kind of a permit, that it's complete.
15 And if not, there ought to be some way to send it back and
16 say, "We don't want to see it until it's done."

17 ACTING DEPUTY DIRECTOR WALKER: Well, let me
18 respond to that in a couple points.

19 First point is we have a standard schedule of
20 evaluation of LEA's regardless of whether there's any
21 cause. I mean we've had -- we're nearing completion of
22 the second cycle where all of the LEA's are evaluated,
23 including the EA's evaluated also.

24 And we will be coming back to the Board right now
25 in the first quarter of '03 to give you a summary of that

1 second evaluation cycle for the entire state, including
2 updating you on what we do in the evaluation process and
3 whether or not we need to make any adjustments that the
4 Committee directs. So that's one thing.

5 The second aspect is that we have what are called
6 triggers that occur if we see a potential problem with an
7 LEA's performance that we can proceed with a focused
8 evaluation or contact with the LEA to point them out, you
9 know, early on in a proactive manner of a problem, try to
10 work that out. So we have that option too, which is
11 somewhat similar to this situation. But it's a little bit
12 more severe with this situation based on the nature of the
13 incomplete permit application. So we're going to go ahead
14 and do a full evaluation of this LEA.

15 I think the other point to make is that the Board
16 has the authority under our existing regulations -- should
17 there be a case where there is clearly a threat to public
18 health and safety and the LEA is not taking appropriate
19 action, the Board can take over enforcement on that
20 specific site through a due process. And so the Board
21 does have that option to consider in real severe cases.

22 So we try to work with LEA's in a proactive
23 manner. We try to help them with the permitting process,
24 and work with them to help them and prevent a situation
25 where we're faced with statutory requirements that once

1 it's determined complete and correct and submitted to us,
2 then we are obligated to process that and consider that.

3 And so we want to avoid getting stuck in a
4 situation where, you know, it clearly is incomplete and we
5 have to either recommend nonconcurrence or it creates a
6 situation where we have to scramble and we have to pull
7 the permit.

8 COMMITTEE MEMBER CANNELLA: So are you telling me
9 that if we get an incomplete application, that we're
10 obligated to put it on the agenda and then at the last
11 minute put it off -- pull it off?

12 ACTING DEPUTY DIRECTOR WALKER: Well, if -- the
13 LEA determines the completeness of the -- they are
14 primary --

15 COMMITTEE MEMBER CANNELLA: Yeah, but they don't
16 set our agenda. You do.

17 ACTING DEPUTY DIRECTOR WALKER: But we have
18 certain grounds under which -- the Board has certain
19 grounds under which they can deny a permit. Last month,
20 an example being Florin-Perkins where there was a
21 situation --

22 COMMITTEE MEMBER CANNELLA: But we're not talking
23 about denying -- what I'm trying to get at is why do we
24 have to go through the exercise of going through a meeting
25 of about an issue that's going to be on the agenda that's

1 clearly incomplete? Why do we go through that? If it's
2 incomplete, why are we obligated to set it on the agenda
3 and discuss it, knowing that it's incomplete, not knowing
4 whether it's going to be completed before our meeting, and
5 waste a lot of people's time going through that exercise?

6 ACTING DEPUTY DIRECTOR WALKER: I'm going to ask
7 Mark de Bie to kind of pipe in a little bit on this one,
8 because I may be to a certain extent floundering on this,
9 but Mark could certainly explain it a lot more clearly
10 than I can.

11 MR. DeBIE: I think Scott has the high level and
12 I have more of the detail aspect of it.

13 The way the statute is written as well as the
14 regulations is the Board has 60 days in which to take
15 action on a proposed permit from the date that the permit
16 is received. So when that permit is received -- and it
17 doesn't say a complete permit or a good permit or any
18 other adjectives, it just says, "the permit" -- the Board
19 has 60 days in which to act.

20 And because of the Board's scheduling, staff is
21 required to write an item with the information available
22 to them and have that go in front of the Board so that the
23 Board has an opportunity to act on that permit within 60
24 days.

25 COMMITTEE MEMBER CANNELLA: Well, do we have to

1 have legislative approval or language to say that we would
2 have 60 days to act upon a complete application?

3 MR. DeBIE: It's staff's understanding that we
4 couldn't do that through regulation, that it would require
5 a statutory change. And there have been attempts in the
6 past. This last go-around there was some legislation that
7 have been forwarded that would allow some more flexibility
8 to deal with incomplete packages, as well as the Board's
9 agenda scheduling. But that was not successful this last
10 time.

11 But it's staff's opinion that you couldn't do
12 that through regulation. You'd have to do it through a
13 statutory change.

14 COMMITTEE MEMBER CANNELLA: Let me ask counsel.
15 I see she wants to push the buttons.

16 What is your response?

17 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Well, I'm
18 not acting as counsel today. But I will weigh in anyway.

19 Mr. Cannella, as you know, in local government,
20 when an applicant submits an application for a development
21 project, local government has the authority to determine
22 within a prescribed timeframe whether the package is
23 complete. And once that determination is made, then you
24 start the processing, and the local government has usually
25 a year to complete it. So that's probably the model

1 you're most familiar with.

2 In this situation, the Board does not have the
3 statutory or regulatory authority to determine
4 completeness and then start the clock. So that's the
5 piece that's different.

6 COMMITTEE MEMBER CANNELLA: But when you get an
7 application that says 10 trucks are coming on-site and
8 none of them are leaving, I would say that that's fairly
9 clear that it's not complete. Now, I just don't
10 understand how we have to be embroiled in something like
11 that that clearly it's incomplete. When you bring in
12 250,000 tons and you get a permit for 150,000 tons,
13 obviously there's something wrong with that.

14 I mean I just don't understand why we have to go
15 through this exercise when clearly it's not complete.

16 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: You're
17 expressing the frustration that P&E staff experiences on a
18 regular basis. And we do our best to try to work with the
19 LEA and the operator to bring all the information together
20 in a timely manner. You'll notice on our agenda items,
21 and for Board members who have been here a little bit
22 longer than you have, Mr. Cannella, that we have changed
23 the way we present some of the information. And we point
24 out to the Board in the agenda item when the application
25 package with the permit, as Mark says is the trigger, when

1 that is received. And we indicate to you in the agenda
2 item what information was missing at the time the package
3 was received so that you know and we can track that kind
4 of performance.

5 But it is kind of a tension point with us because
6 we don't really have the authority to reject. What we
7 have done in couple of instances, and I think Mr. Paparian
8 will remember this one, when a package is received and
9 then while the clock is running, if the LEA changes the
10 permit, and essence submits a new permit, the Board has
11 acted in the past to start the clock over again.

12 But we have not felt we've had the authority to
13 stop the clock or not start the clock because a piece of
14 information was missing from the entire application
15 package.

16 COMMITTEE MEMBER CANNELLA: Thank you.

17 CHAIRPERSON PAPARIAN: I think Mr. Jones has
18 something to say.

19 But I was trying to give them the benefit. I
20 thought they were compostable trucks because they are
21 doing composting on the site.

22 (Laughter.)

23 COMMITTEE MEMBER CANNELLA: I wondered how you
24 did that, but I guess they figured it out.

25 CHAIRPERSON PAPARIAN: Mr. Jones.

1 COMMITTEE MEMBER JONES: Thanks, Mr. Paparian.

2 Actually this has been an issue long before I
3 ever got here. Part of the timing was permits that never
4 went through. And then that's when the clocks went
5 because they'd hold a permit forever.

6 But I think that your -- the last discussions we
7 had on this when we talked about completeness and things
8 like that, and it was pretty much determined that you
9 couldn't make that determination, but it's incumbent on
10 the LEA to submit a complete package. And the LEA has to
11 actually certify that it is a complete package.

12 So, I think that your reaction to this by wasting
13 our time and your -- well, your time in getting this
14 permit and finding out it wasn't right, to then evaluate
15 the LEA, that's exactly what the Board had used as a tool
16 for our staff. Because LEA's sometimes were under
17 different pressures and things like that, either from
18 advocates of permits or local governments or whatever,
19 that you leave the authority with them. But then if they
20 fail to do their job -- which one of the things they have
21 to sign when they submit is that it's a complete
22 package -- clearly, if the LEA signed that this was a
23 complete package and turned in something that was that
24 bad, it's appropriate for you to do an evaluation and
25 maybe decertify that LEA. And that would be a proper

1 response to wasting time and wasting the staff's time.

2 And it sends a message.

3 And I think it stays consistent with the fact
4 that -- timing issues are huge for the industry as well as
5 local government. And we got a long way when we started
6 putting times on here where permits couldn't be held
7 hostage for, in my case, over a year, actually year and a
8 four months that it sat in this place or another place
9 that looked like this.

10 (Laughter.)

11 COMMITTEE MEMBER JONES: So I think it's
12 appropriate that those times are in there. But I do think
13 that your remedy is to do the LEA evaluation and get to
14 the heart of it and decertify or take away some of that
15 authority or whatever you guys think is appropriate to
16 bring to this Board.

17 Clearly, then, we send a firm message to
18 everybody that we're not going to stand for this. And so
19 I approve and we'll support you guys in that action
20 because it makes sense.

21 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Mr.
22 Chairman, just one more point to one of the things that
23 Mr. Cannella raised, was why do we keep this on the agenda
24 and then it gets pulled at the last minute.

25 The authority to pull a permit really rests with

1 the LEA. It's their permit. So we can encourage them to
2 pull back the permit to give us more time. But we don't
3 have the unilateral authority to take the item off the
4 agenda and, in essence, stop the clock. So that's why you
5 see it in the agenda and the clock is running and we're
6 trying to work out those issues. But ultimately the
7 decisions to pull is the LEA. And there have been
8 instances where we have strongly encouraged an LEA to pull
9 a permit, and they've chosen not to and chosen to come
10 before the Board and make their case.

11 COMMITTEE MEMBER CANNELLA: Aren't our agendas
12 public information?

13 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Yes, they
14 are.

15 COMMITTEE MEMBER CANNELLA: Aren't we under the
16 same rules of having an agenda item posted 72 hours in
17 advance of the meeting?

18 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: We actually
19 post ours 10 days before.

20 COMMITTEE MEMBER CANNELLA: Okay. So then how
21 could we take action on a permit application that's
22 incomplete until the day before the meeting? We violate
23 the 72-hour notice.

24 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Well, we
25 provide the information that we have available at the

1 time. And actually that is sufficient for public
2 noticing. We're actually only required to post the title
3 itself. And I'll let counsel take it from there.

4 STAFF COUNSEL BLEDSOE: Mr. Cannella, by deleting
5 an item from the agenda you don't violate any public --

6 COMMITTEE MEMBER CANNELLA: I'm not talking about
7 deleting it. I'm talking about acting on an application
8 that was incomplete when the notice went out and wasn't
9 complete until just a day before, the night before that we
10 were going to take action on it. The public did not have
11 an opportunity to review the information that we are now
12 going to take action on.

13 STAFF COUNSEL BLEDSOE: Well, new information is
14 frequently, you know, brought before the Board at the --
15 or the Committee at the time of the meeting.

16 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: And
17 generally too in the agenda item, writing it without all
18 the information, we do provide notice to the Board as well
19 as the public that these pieces of information are
20 pending. Therefore, the recommendation is pending. And
21 that the information, if it is available, would be brought
22 forward to the Board at the Board meeting.

23 So we do our best to keep everyone informed of
24 what we have and what we're expecting to have by the time
25 of the meeting.

1 CHAIRPERSON PAPARIAN: And actually, Mr.
2 Cannella, in some ways represent a broader issue about
3 access to information on the agendas that I was hoping to
4 bring up some time next year probably in the Admin
5 Committee. And, that is, I know that a lot of the people
6 who have an interest in items before us don't see the
7 actual agenda item until pretty close to the meeting where
8 it's taking place. I know I've been in a position where
9 I've actually printed out copies of an agenda item and
10 handed them to stakeholders, some of whom I see in this
11 room.

12 And I think that having a -- at least having
13 clearly understood the system -- and this is not at all a
14 criticism of the existing system -- but just having
15 clearly understood what the system is and having us all
16 accepting of that system I think is going to be important.

17 COMMITTEE MEMBER CANNELLA: Well, when they
18 submit an application, we have to evaluate it. We have to
19 evaluate on the information that they submitted to us.
20 When they submit it at the last minute, what kind of an
21 evaluation can staff prepare to give to us to have for a
22 meeting? I mean -- I don't want to belabor this any
23 longer, but it seems to me that we should have a whole lot
24 more options to us to deny applications when they're
25 incomplete than what I'm being told today.

1 CHAIRPERSON PAPARIAN: Yeah, and I agree with
2 you. And I've shared that frustration on a number of
3 applications in the past.

4 I do remember at least one situation where, as
5 staff has indicated, an application changed so much that
6 we just declared it was a new application, it was a
7 different project in front of us than the project where
8 the clock originally started.

9 COMMITTEE MEMBER CANNELLA: Well, then if I share
10 all your frustration, then I feel like an accepted member.

11 (Laughter.)

12 CHAIRPERSON PAPARIAN: Back on this one
13 specifically. I know in the past, I think I may have been
14 the one to raise concerns. I think others may have raised
15 a similar concern involving whether there were issues
16 involving the treatment of municipally owned facilities in
17 this jurisdiction, whether they were getting any type of
18 advantage over a comparable privately owned facility in
19 different jurisdictions. So I would -- I think some of
20 that was actually on the record in some of the past permit
21 applications that came before the Board. So I think it
22 would be something worth taking a look at just to make
23 sure there aren't any lingering issues involving
24 disproportionate treatment of municipal versus privately
25 owned facilities.

1 And then maybe, you know, since the issue's been
2 raised here, maybe if you could report back in a couple
3 months about how things are going with the evaluation. I
4 think I'd certainly like to have an update maybe in
5 February or so.

6 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: I was
7 thinking maybe we can fold that in to the update on the
8 whole evaluation process and then have a separate piece on
9 this particular situation.

10 COMMITTEE MEMBER CANNELLA: While we're asking
11 for reports back, could you possibly discuss at some point
12 going to the Legislature and amending the statute that
13 allows the Board to determine when an application is
14 complete before we start the process.

15 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Well, we
16 note your interest and we'll continue that internal
17 dialogue about that.

18 COMMITTEE MEMBER CANNELLA: Okay.

19 CHAIRPERSON PAPARIAN: I would suggest that you
20 get together with Mr. Cannella and talk about that process
21 and how it might --

22 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: I'd be
23 happy to do that. We'll talk to you about that.

24 CHAIRPERSON PAPARIAN: Okay. Thank you.

25 All right. Are we ready for the first item?

1 ACTING DEPUTY DIRECTOR WALKER: Yes we are.

2 CHAIRPERSON PAPARIAN: Go ahead.

3 ACTING DEPUTY DIRECTOR WALKER: Item B is
4 consideration of a new full solid waste facilities permit
5 (transfer/processing station) for Tehama County/Red Bluff
6 Material Recovery Facility, Tehama County. This is Board
7 Item 22.

8 Christy Karl will give the staff presentation.

9 MS. KARL: Good morning, Members of the
10 Committee.

11 This facility has been constructed adjacent to
12 the Tehama County/Red Bluff Landfill and is owned by the
13 Tehama County/City of Red Bluff Landfill Management
14 Agency. It will be operated by the Green Waste of Tehama.

15 The proposed permit allows for processing and
16 transfer of 300 tons of waste per day and a maximum of 200
17 vehicles.

18 Staff has found the permit meets the requirements
19 under the authority of the Board, and recommends the Board
20 concur in the issuance of Solid Waste Facility Permit 52
21 AA 0027 and adopts Resolution 2002-737.

22 A representative from the management agency is
23 present if you have any questions.

24 And this concludes staff presentation.

25 CHAIRPERSON PAPARIAN: Any questions, members?

1 So I mean it appears they're initiating a
2 recycling and diversion operation with the siting of this
3 facility, which I congratulate whoever's in the audience
4 representing --

5 MS. KARL: Allen Apps is representing the
6 authority.

7 CHAIRPERSON PAPARIAN: Yeah, good. The type of
8 thing we love to see.

9 Mr. Jones.

10 COMMITTEE MEMBER JONES: While you're at it, it's
11 the Green Team out of -- it's Jessie Waggle and those guys
12 out of San Jose. And what they did at Zanker and others
13 is probably pretty good testimony, when you consider
14 Zanker does about 95 percent recycling. Because we used
15 to own it at one time when Jessie ran it.

16 I want to move adoption of Resolution 2002-737,
17 consideration of a new solid waste facility permit
18 (transfer/processing station) for the Tehama County/Red
19 Bluff Materials Recovery Facility in Tehama County.

20 COMMITTEE MEMBER MEDINA: Second.

21 CHAIRPERSON PAPARIAN: Okay. We have a motion
22 and a second.

23 Secretary, call the roll.

24 SECRETARY FARRELL: Cannella?

25 COMMITTEE MEMBER CANNELLA: Aye.

1 SECRETARY FARRELL: Jones?

2 COMMITTEE MEMBER JONES: Aye.

3 SECRETARY FARRELL: Medina?

4 COMMITTEE MEMBER MEDINA: Aye.

5 SECRETARY FARRELL: Paparian?

6 CHAIRPERSON PAPARIAN: Aye.

7 This would be one for consent. Okay.

8 ACTING DEPUTY DIRECTOR WALKER: Item D is
9 consideration of the scoring criteria and evaluation
10 process for the Farm and Ranch Solid Waste Cleanup and
11 Abatement Grant Program for Fiscal Year 2002-2003 and
12 Fiscal Year 2003-2004. This is December Board item 24.

13 And Carla Repucci will give the staff
14 presentation.

15 MS. REPUCCI: Good morning. My name is Carla
16 Repucci. And I will present Committee Agenda Item D,
17 which is Item number 24 on the Board agenda, for the
18 consideration of the scoring criteria and evaluation
19 process for the Farm and Ranch Grant Solid Waste Cleanup
20 and Abatement Grant Program for Fiscal Year 2002-2003 and
21 2003-2004.

22 Nineteen thousand two hundred one dollars have
23 been awarded for Farm and Ranch Grants for Fiscal Year
24 2002-2003, with approximately \$962,000 remaining.

25 A total of \$201,279 was awarded in grants for

1 fiscal year '01-'02.

2 Thirty-eight grants, totaling \$973,634, have been
3 awarded for farm and ranch grants since the program began.

4 The scoring criteria for the Farm and Ranch Grant
5 Program are being revised for several reasons. I will
6 provide a summary of those changes.

7 The specific titles and criteria definitions have
8 been changed to be consistent with the recently revised
9 standardized scoring criteria approved by the Board in
10 June.

11 In June the Board also approved policy to allow
12 program staff to request the points assigned to the
13 evidence of a recycled content purchasing policy criteria
14 equal 10 percent of the points available to determine
15 eligibility rather than the previous requirement of 15
16 percent.

17 The majority of the funds awarded through the
18 Farm and Ranch Grant Program are spent on the rental of
19 equipment and labor to clean up a site, not the purchase
20 of tangible items that would require the consideration of
21 recycled content products. Therefore, staff are
22 requesting that the points available for the recycled
23 content criteria be set at 10 percent, which in this case
24 is 15 points.

25 Three program criteria are being proposed as an

1 addition to the general scoring criteria. The first
2 provides up to 10 points for those applicants that have
3 established innovative or cost-effective programs within
4 their jurisdiction to discourage the illegal disposal of
5 solid waste and encourage proper disposal. This priority
6 is spelled out in the statute and was previously addressed
7 in the "needs" section of the scoring criteria.

8 Another predominant concern in the Legislature
9 was the burden that rural farmers and ranchers face when
10 enforcement orders are issued against them for illegal
11 disposal sites on their rural property.

12 To help focus the grant proposals to address the
13 Legislature's concern the second and third program
14 criteria provide 25 additional points for proposals that
15 include cleanup of farm and ranch property currently under
16 production and 25 points for cleanup of farm and ranch
17 property that is not owned by a local agency.

18 Staff feel these new criteria will provide
19 priority where it was intended without excluding grant
20 proposals for cleanup on publicly-owned land or fallow
21 land.

22 The revised scoring criteria allows for a maximum
23 of 150 points, which is an increase from the previous
24 amount of 100 points. The points were increased to
25 accommodate the three new program criteria.

1 In addition, the percentage required to received
2 a passing score was reduced. The previous criteria
3 required an applicant to receive a score of 50 percent of
4 the points available. The scoring criteria before you
5 today requires a passing score of 40 percent for an
6 application to be considered for funding.

7 This reduction of the passing score ensures
8 applicants requesting cleanup of illegal disposal sites on
9 public land or land not currently under production were
10 not excluded from funding, just put at a lower priority.

11 The Board-approved policy is to award grants to
12 the highest ranking proposals based upon the geographic
13 distribution of the state's population.

14 Staff believe, as specified in the statute, that
15 the fundamental purpose of the Farm and Ranch Grant
16 Program is to provide grants to support the cleanup of
17 illegal disposal sites of solid waste on farm and ranch
18 property owned by innocent parties.

19 The grants provided under this program are
20 consistent with that purpose and would not be served by
21 a geographic distribution of funds requirement.

22 Staff recommends the Board adopt Resolution
23 2002-738, authorizing staff to use the revised scoring
24 criteria and evaluation process for the Farm and Ranch
25 Solid Waste Cleanup and Abatement Grant Program.

1 Are there any questions?

2 CHAIRPERSON PAPARIAN: Questions?

3 COMMITTEE MEMBER JONES: I have no problem with
4 us lowering the score and doing all that stuff. But there
5 is one requirement, that the property owner is not
6 responsible for the dumping. I mean what are we doing to
7 ensure that that's the case? Because, otherwise, this is
8 a free-yard cleanup bill. And it was critical that we had
9 that in the original language that Senator Lockyear put
10 together. I mean I don't really see -- I see it in your
11 write-up of the description that it's one of the criteria.
12 But how do I know that that's really being enforced?

13 MS. REPUCCI: The applications all go through an
14 eligibility scanning when they're received. And the
15 applicant, let's say it's city of San Diego, is required
16 to obtain an affidavit from the property owner or property
17 owners stating that they were not responsible for the
18 illegal disposal. So if -- when the application was
19 received if that was not present, you know, that applicant
20 would need to get that from the property owner before we
21 could review the application.

22 COMMITTEE MEMBER JONES: Okay. I know at the
23 time when we were discussing this bill there was an
24 activity by the LEA that they were supposed to help
25 reinsure that in fact this was new -- you know, something

1 that that property -- otherwise this is, you know, this is
2 just a gift of public funds for people cleaning out their
3 area. So we just have to be real careful about that.

4 One of the issues when it first came up was that
5 somebody could open their own transfer station. Let them
6 dump it on farmland, and then haul it away at our expense.
7 And that's why it was so critical that that element was
8 there.

9 So I don't see it in the scoring, but somehow it
10 has to be a strong message that we're not in the business
11 of just transferring waste.

12 ACTING DEPUTY DIRECTOR WALKER: I'd like to just
13 add that that is -- rather than the scoring, that's
14 eligibility. So if they can't get that affidavit, plus
15 the local government applicant does not -- under their
16 certification of the application to us does not confirm
17 that, then that application will be rejected and it will
18 not be scored.

19 COMMITTEE MEMBER JONES: Okay. You know, I think
20 we had talked originally about LEA's looking through it
21 and seeing if they could find addresses, things like that.
22 It's going to be critical because if it's a property owner
23 that's got addresses on it, then obviously it's just
24 illegal dumping. So as long as that's reinforced, I don't
25 have a problem with it. But otherwise that was the only

1 hole that could be -- that you could drive a truck through
2 it.

3 CHAIRPERSON PAPARIAN: I had a couple questions.

4 The local agency issue. In the new version
5 there's 25 points granted if it's not currently owned by a
6 local agency. Is that --

7 MS. REPUCCI: This was an attempt to address the
8 Legislature's concern that rural property owners are, you
9 know, being illegally disposed upon. And while it was
10 certainly allowed under the previous scoring criteria,
11 this was an attempt to really focus priority.

12 CHAIRPERSON PAPARIAN: What if you had landlike,
13 say, a local water agency has a big chunk of land and
14 they're using some of it for grazing, and there's illegal
15 dumping going on that land. Would they be disadvantaged
16 by this?

17 MS. REPUCCI: They won't qualify for those 25
18 points. But they wouldn't be excluded from funding as
19 long as they met the eligibility requirements and received
20 a passing score.

21 CHAIRPERSON PAPARIAN: Have we had local agencies
22 apply and receive grants?

23 MS. REPUCCI: Certainly.

24 CHAIRPERSON PAPARIAN: For what types of land?
25 Has it been farm and ranch land or has it been kind of on

1 the edge?

2 ACTING DEPUTY DIRECTOR WALKER: Yeah, we've
3 had -- an example would be in June we had the city of San
4 Diego -- actually County of San Diego owns a lot of
5 property along the Tijuana River, Parks Department. But
6 they lease out a good portion of these lands for actual ag
7 production. And so there was -- that was a case in June
8 where local government owned the property. It was clearly
9 an ag production. They had eligible projects and the
10 Board approved the funding of those projects. So it's an
11 example -- it's interesting, but just because it's local
12 government owned doesn't mean there's ag production or
13 grazing or timber harvest. A lot of
14 local-government-owned property does actually have
15 agricultural activity on it, and it's just not
16 considered -- you know, I think -- primarily we have
17 private parcels, but there are cases of publicly owned
18 parcel that local governments own.

19 CHAIRPERSON PAPARIAN: And that's part of my
20 point, is that there are times when a local-agency-owned
21 parcel looks, smells, feels, and produces the same as an
22 agricultural parcel.

23 STAFF COUNSEL LEVINE: This is Steven Levine from
24 Legal. And we did try to address that in a couple of
25 fashions. One, specific to your question: Of the two

1 large 25-point scoring aspects, the one that is presently
2 for agricultural production, that would be regardless of
3 whether it is a private entity or a public entity. Either
4 would get that 25 points if there's active agricultural
5 production on the land.

6 The other 25-point aspect is limiting it to
7 non-public entities. And the predominant reason we are
8 trying to focus that is sort of a balancing act. We have
9 an under-subscribed program. We've an under-subscribed
10 program for a number of years. Over the course of that
11 time we have looked to expanding the original core of the
12 legislative intent which was to assist private entities
13 who have large rural lands and can't police their full
14 lands from the burdens of local enforcement agencies
15 enforcing against them and also in fines and penalties and
16 eventually cleanup costs. And that's sort of where the
17 legislation was focused.

18 Because we had an under-subscribed program and
19 because, for the reasons you mentioned, it is important to
20 also look at illegal disposal on public lands, we sort of
21 expanded from the legislative focus to public agencies.
22 And we found a lot of willing public agency recipients to
23 that expansion. We're trying -- now that we've done other
24 things with additional funding, additional caps on how
25 much we can spend on a site, we're hoping to get more

1 subscribed. And we're hoping this particular scoring
2 criteria will be a transition period to again focus the
3 money where the original legislative intent was, which is
4 the private land owners, and yet not exclude public land
5 owners at least at this juncture when there's this
6 subscription issue.

7 CHAIRPERSON PAPARIAN: Okay. I'm satisfied we
8 can go forward in that away. And then maybe we can take a
9 look at it the next time around the year and see how it's
10 going, whether we're losing worthy projects or not because
11 of this.

12 On the issue of marketing for the program to make
13 sure that it does get more fully subscribed. Actually I
14 have had conversations in the past with our Public Affairs
15 Office and with staff about what we can do to improve the
16 marketing of this program so that more potential
17 recipients are aware of it. I'd like to actually suggest
18 that maybe we ask the Public Affairs Office -- this might
19 be more in the jurisdiction of the Admin Committee -- we
20 ask the Public Affairs to come back maybe by March or so
21 with a marketing plan for the program so that we can
22 assure we're doing our best to let the potential
23 recipients know that the program is available and that
24 they -- if they have projects that are eligible, they
25 ought to take advantage of the program.

1 MS. REPUCCI: We would welcome that.

2 CHAIRPERSON PAPARIAN: Mr. Cannella.

3 COMMITTEE MEMBER CANNELLA: Along those lines,
4 I've already contacted folks within the Farm Bureau, the
5 Wine Institute, the local government folks, the CSAC and
6 League of California Cities about the program so that they
7 could put it in their newsletters so that the farm
8 community would have a better idea about the program.

9 CHAIRPERSON PAPARIAN: You're a one-man marketing
10 department.

11 COMMITTEE MEMBER CANNELLA: I didn't know we had
12 a marketing program on this, so I just did it.

13 CHAIRPERSON PAPARIAN: Well, I mean I think
14 that's great that you're doing that. And I think if we
15 could engage our Public Affairs staff in helping in those
16 efforts, I think those are exactly the sort of audiences
17 that need to hear about the program and need to hear about
18 it over and over again so that as they, you know,
19 discover --

20 COMMITTEE MEMBER CANNELLA: Well, the fact they
21 wanted to increase the amount of dollars that are
22 available, I think that's become more of a viable program
23 for them. They seem to be extremely interested in it.
24 And as they put it in their news publications, I think we
25 might have more and more people subscribe to the program.

1 CHAIRPERSON PAPARIAN: Okay. Mr. Jones.

2 COMMITTEE MEMBER JONES: Our public information
3 people have a brochure that has all of our grant programs
4 in it that -- when I went to RCRC and spoke up at their
5 convention, I brought I think 100 of them. And have
6 already gotten calls. So I think if we do the same thing
7 with the CSAC and the League -- and they may be doing that
8 already. It seems to me that when they were at the
9 League, they had those brochures. But I think we got to
10 keep reinforcing it. But I know the people at RCRC went
11 nuts because I've gotten a bunch of those calls.

12 I want to move, Mr. Chair, if there's no other
13 questions.

14 CHAIRPERSON PAPARIAN: Go ahead.

15 COMMITTEE MEMBER JONES: Adoption of Resolution
16 2002-738, consideration of the scoring criteria and
17 evaluation process for the Farm and Ranch Solid Waste
18 Cleanup and Abatement Grant Program for Fiscal Year 2-3
19 and 3-4.

20 COMMITTEE MEMBER CANNELLA: Second.

21 CHAIRPERSON PAPARIAN: Mr. Cannella seconded, I
22 think.

23 We have a motion by Mr. Jones, seconded by Mr.
24 Cannella.

25 Secretary, call the roll.

1 SECRETARY FARRELL: Cannella?

2 COMMITTEE MEMBER CANNELLA: Aye.

3 SECRETARY FARRELL: Jones?

4 COMMITTEE MEMBER JONES: Aye.

5 SECRETARY FARRELL: Medina?

6 COMMITTEE MEMBER MEDINA: Aye.

7 SECRETARY FARRELL: Paparian?

8 CHAIRPERSON PAPARIAN: Aye.

9 This seems like one for consent.

10 Okay. Next.

11 ACTING DEPUTY DIRECTOR WALKER: Item E is
12 consideration of the adoption of the negative declaration
13 (State Clearinghouse No. 2002112004) and proposed
14 regulations for the waiver of terms and conditions during
15 temporary emergencies. This is December Board Item 25.

16 Mary Madison-Johnson will provide the staff
17 presentation, along with Erica Weber.

18 MS. WEBER: Good morning.

19 This item brings forth consideration of adoption
20 of the proposed regulation package and accompanying
21 California Environmental Quality Act documentation. The
22 proposed regulation was written to assist enforcement
23 agencies and Waste Management Board staff to establish the
24 procedures for issuance of a waiver of terms and
25 conditions of solid waste facility permits during

1 temporary emergencies.

2 A public hearing was held at the November 12th,
3 2002, Committee meeting. And the Committee members
4 directed staff to prepare an agenda item for consideration
5 of adoption at the December 2002 Board meeting.

6 Comments were received during the comment period
7 and public hearing. Staff have analyzed those comments
8 and, as outlined in the agenda item, only proposed one,
9 nonsubstantial change with that regulatory affect.

10 A Negative Declaration was filed for this
11 regulatory package. Today is the final day in the comment
12 period for that document.

13 If staff receives no comments, we will recommend
14 Board adoption of a Negative declaration, Resolution
15 2002-739, and the proposed regulatory package, Resolution
16 2002-740.

17 This concludes staff's presentation.

18 CHAIRPERSON PAPARIAN: Okay. Any questions?

19 I do have a couple speakers.

20 Any questions before we -- from the Board?

21 Okay. Justin Malan CCDEH.

22 MR. MALAN: Mr. Chair, Board members, thank you.
23 Just Malan with the Environmental Health Directors.

24 I did comment at public testimony last meeting
25 regarding this item and expressed the concern of the

1 Environmental Health Directors about the precedent that
2 the review and possible change by the executive director
3 of an order from an LEA may have.

4 I realize that today is the final day for public
5 comment for the EIR, but again request some indulgence and
6 maybe some guidance from you on this issue. Because at
7 this point we're not quite sure what the motivation behind
8 keeping that provision in is in the regulations; we're not
9 sure what the need is. And it would be much easier for us
10 to respond further if we understood why, since we have
11 changed the PEP policy from a policy to a set of
12 regulations, what's driving the requirement or the
13 authorization of the executive director to change an EA or
14 an LEA decision. It wouldn't be an EA, but an LEA
15 decision regarding this issue.

16 We are having a meeting with the LEA's and the
17 Environmental Health Directors on Wednesday. So,
18 unfortunately, our schedules are -- we had hoped to get a
19 more formalistic response to this issue and bring it to
20 this Committee, but we're not ready for that. We would be
21 ready in time for the main Board hearing.

22 But, again, just to repeat our concern with
23 respect to the terms and conditions, is that, as you may
24 recollect, the proposed regulations provide the authority
25 to the executive director of this Board to review and

1 amend the terms and conditions of a stipulated order. I
2 believe the concern of this arose when we had this as a
3 policy with the Board, and there was some vagueness and
4 possibly even abuse of these stipulated orders by the
5 LEA's.

6 We were very supportive of changing that policy
7 into regulations. And we have been across the Board in
8 changing vague policies or policies that were subject to
9 interpretation, by either the state or the locals or
10 industry, into clear-cut regulations.

11 What we are not sure about is why would this
12 Board want to open up yet another vagary and set us down a
13 slippery slope where it is saying the LEA may take action,
14 but that the executive director of this board can second
15 guess that action. You've just heard today that you have
16 a very explicit process for evaluating LEA's. And that's
17 appropriate. We have supported 100 percent. I've
18 testified virtually every year in support of the criteria
19 used for evaluating LEA's. There's no question that
20 that's a good process and it's a needed process.

21 You also -- you heard from Scott this morning
22 that the Board has the explicit authority in statute and
23 regulation that it can step in and, if there's any
24 imminent threat to the public health and the environment,
25 the Board can supercede, override, push out, push aside

1 the LEA.

2 There's no absence of your authority to make sure
3 that nothing is harmed in the environment or public
4 health. But those are clearly established statutory
5 authorities that you have right now.

6 What we are concerned about is the precedent.
7 And the precedent is that this blurs the distinction
8 between an LEA act and a Waste Board act. And whether it
9 applies to this, whether it applies to permits, whatever
10 it applies to, if we do not maintain the separation and
11 the distinctive understanding of who's taking any
12 particular enforcement act, we step into a quagmire,
13 potentially a legal quagmire that's going to make it so
14 difficult. Because if the executive director of this
15 board changes, tinkers with, modifies an order by an LEA,
16 but it's not done by the Board, whose action is it, whose
17 enforcement action is it? Is it yours? Is it ours? Do
18 our procedures follow? Does the hearing panel get
19 triggered? Does it have to come to this Board? Does it
20 have to go through the local process before this Board.

21 Don't confuse the issue. Keep it as it is.
22 There's no need for that. If you are concerned that LEA's
23 are using this too liberally, giving their buddies a
24 break, then you have every authority, every mechanism in
25 place to keep that in check.

1 Again, it's the slippery slope. It's not the
2 precedent for the precedent's sake, but it's just clearly
3 an issue where we're confusing the authority of two
4 separate legal entities. And we just don't see that
5 there's any compelling reason. I would like to hear from
6 any one Board member where the compelling reason is over
7 and above the authority that you have. Now that we have
8 this clearly in regulation, what is the need for it? If
9 we hear a compelling need, we may back off. But up till
10 now former Board member pushed this issue during the
11 process of moving it from a policy to a regulation. Those
12 days are over. You've got a regulation. Why beat this
13 dead horse.

14 Thank you.

15 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Mr.
16 Chairman?

17 CHAIRPERSON PAPARIAN: Yes. Go ahead.

18 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Legal
19 counsel and I would like to suggest to the Board that --
20 in response to the comment of why are we setting this
21 precedent. If you recall those of you that worked on this
22 kind of remake of the PEP policy, that what you were
23 doing, you were trying to pattern that after existing
24 regulations that deal with emergency waivers; not the
25 temporary emergencies that we're talking about in this

1 Regulation package, but the existing regulatory scheme
2 whereby there can be an emergency waiver where there's an
3 actual emergency declared. And as part of that process --
4 and I direct your attention -- and I'm sorry we don't have
5 copies of this -- to Section 17210.9, executive director's
6 powers and duties relative to the emergency waiver.

7 And the section that Mr. Malan is talking about
8 in the set of regulations before you is patterned exactly
9 after what is in existing regulation for declared
10 emergencies. And it reads very similarly, that once the
11 waiver is issued, the executive director of the Board
12 shall review all EA waiver approvals. Executive director
13 may condition, limit, suspend, or terminate an operator's
14 use of a waiver if it is determined that use of the waiver
15 would cause harm to public health and safety and the
16 environment. And you'll see that exact language in the
17 regulations before you.

18 So I just point that out to you, that the members
19 that worked with the staff on the preparation of this reg
20 package deliberately chose to pattern it after the
21 existing authority with respect to declared Emergencies.

22 So I would argue that the precedent has already
23 been set.

24 CHAIRPERSON PAPARIAN: And the existing
25 regulation's already in place for those emergencies,

1 right?

2 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: That's
3 correct.

4 MR. MALAN: See, I think our concern is the
5 distinction between a temporary and a declared emergency.

6 And, again, even if you see a similarity in that
7 precedent, it further confuses the relationship, the
8 statutory relationship or the legal authority between the
9 locals and the Board.

10 CHAIRPERSON PAPARIAN: We'd have to go I think to
11 some of the -- perhaps some of the transcripts of some of
12 the past meetings where we discussed this. But I think
13 one of the issues was that a lot of the changes that would
14 take place as a result of an action under this section are
15 similar to the granting of a new permit. And I remember
16 debating whether we should have this thing come back to
17 the full Board or back to the executive director and the
18 implications of both. And I think we wound up with this
19 process as one that worked -- that we were comfortable
20 with. If we weren't happy with the action of an executive
21 director, we could certainly take action against the
22 executive director. But that we wanted to give the
23 executive director some responsibility here, and this is
24 the type of responsibility that we came up with.

25 MR. MALAN: Mr. Chair, I remember several years

1 ago talking about this issue, not because we fear the
2 executive director, not because we fear the decision of
3 the Board, but it is a legal precedent that is worrisome.
4 Because we do have this -- we're creating a situation
5 again -- and I'll ask the question, whether it's within
6 the established emergencies or not, these are temporary
7 emergencies. We understand exactly what you're saying
8 about trying to moderate the extended time or the
9 additional hassle of dealing with these waivers and terms
10 and conditions of the waivers. But, again, our question
11 is: What happens if this is challenged? Does this remain
12 an LEA action? Is this an LEA enforcement action? And if
13 so, what happens if the LEA disagrees with the Board?
14 Then we have a whole new process to go through.

15 I mean this is possibly a legal counsel's
16 question. But if an LEA proposes some terms and
17 conditions, it is then modified against the will of the
18 LEA by the executive director, it's not modified by your
19 Board. Your Board hasn't overridden LEA decision, which
20 it's perfectly entitled to do. Our question remains, that
21 if that decision by the LEA is changed, not by your Board
22 but by one of your staffers, and then has the force of
23 regulation, whose enforcement action is it?

24 If you take over that enforcement action, then I
25 think the LEA's wouldn't complain. Then you've clearly

1 stepped in, you've used your other authority to override
2 the LEA decision. And if you've got good cause for doing
3 that, go ahead. But I think what you're doing is you're
4 tinkering with an LEA's decision. And it's a fundamental
5 issue. It's not that we're going to see hundreds of these
6 things. It's not that we're worried about an abuse by the
7 Board and abuse by the LEA.

8 I'm still not quite sure why we want to establish
9 that precedent of muddying the water.

10 CHAIRPERSON PAPARIAN: Mr. Jones.

11 COMMITTEE MEMBER JONES: Thanks, Mr. Chair.

12 You and I did an awful lot of work. We sat
13 through all these meetings.

14 One of the reasons that we agreed to put that
15 language in was -- one of the reasons I agreed was, number
16 1, it was completely consistent with the emergency
17 waivers. Number 2 was, there are situations that are
18 going to come up that clearly -- there are changes in a
19 community or a waste shed where an LEA's got to take
20 action quicker than what a permit would enable them to do.
21 And this enables them to do that.

22 The one thing that the Board questioned was --
23 and a lot of it had to do with testimony that was given --
24 was how do we ensure that in fact we're not throwing out
25 the permitting process just as a sense of convenience?

1 And I didn't want our Board to vote on these
2 modifications, to terms and conditions put in by an LEA,
3 because I don't think that that looks like a permit. So I
4 don't think this Board -- I don't think it's appropriate
5 that this Board votes on that piece that doesn't look like
6 a permit.

7 But I do think it's appropriate that there is
8 some oversight. If, as your question states, you think
9 that an executive director has determined or wanted to
10 change a notice -- I mean the agreement, and the LEA
11 objects to it, then the LEA can pull the agreement. And I
12 think under exist statute, the LEA could actually say,
13 "You've just created an emergency and I'm going to declare
14 the terms and conditions under that statute."

15 I mean if you remember back at the arguments, we
16 were saying that LEA's have the authority to change terms
17 and conditions when it comes to an emergency now. Right?

18 MR. MALAN: Mr. Jones, wouldn't there then again
19 be subject to the review and changed by the executive
20 director? Don't we end up in a cycle?

21 What we would suggest, that may be cleaner, is
22 that if the terms and conditions are submitted to the
23 Board for staff review and the executive director makes a
24 determination that the permit conditions are fundamentally
25 altered, and then has to go to Board for review rather

1 than changing it. I think the fundamental concern is not
2 that the LEA is trying to slip something under the counter
3 and doesn't want your staff to review it and have the
4 ability to change it. The fundamental concern is the
5 vagary of the status of that enforcement action. Is it an
6 LEA action or is it a board action?

7 And I'm not quite sure why -- the environmental
8 health directors as the ultimate authority at the local
9 level for their programs are more concerned about this
10 than other provisions. But they -- what I think they
11 would rather see is that if the terms and conditions are
12 submitted to the Board and the executive director or staff
13 feel that they are inappropriate, then maybe they can get
14 reviewed by the full Board. There's a finding made. But
15 it's the fact that the terms and conditions of a local
16 decision, a local permit -- just like a local permit or a
17 local enforcement order are changed through this sort of a
18 gray area of the Board's authority is what's worrisome.
19 And that's -- you know, that's an issue. I mean if it
20 goes through, it goes through. I don't know if there'd
21 been any major issues with the full emergency provisions.

22 But that remains a concern. We remain vigilant
23 of that separation of authority. Because upon that is
24 based our evaluations, upon that is based the authority of
25 the local to act or not act and for you to provide

1 oversight.

2 COMMITTEE MEMBER JONES: Can I ask a question,
3 Mr. Paparian?

4 CHAIRPERSON PAPARIAN: Mr. Jones.

5 COMMITTEE MEMBER JONES: This is for staff.

6 If an LEA issues an emergency waiver, temporary
7 waiver, that is appealed under AB 59, and we've modified
8 it, who does he appeal against, us or the LEA?

9 MR. DeBIE: Mark de Bie with Permitting and
10 Inspection.

11 I think that's the question that Justin Malan is
12 putting forward to the Board. And I would venture an
13 opinion that it is -- the stipulated agreement is an
14 agreement that is crafted by the LEA in cooperation with
15 the operator. Modifications to that stipulated agreement
16 by the executive director would be only based on the
17 criteria that certain aspects of that agreement would
18 cause harm to public health and safety and the
19 environment, so they would -- that's the only criteria
20 that would be used.

21 If it is appealed, I would say certainly the LEA
22 still maintains some responsibility over that initial
23 stipulated agreement. And then I would defer to Legal.
24 But I would speculate that the Board would take on some
25 responsibility for the changes that they made to that

1 stipulated agreement, but not the agreement in its
2 entirety.

3 COMMITTEE MEMBER JONES: All right. So --

4 MR. DeBIE: But I think it's something that needs
5 to be to some extent worked out. That it would be hard to
6 predict how a hearing panel or a court might rule.

7 CHAIRPERSON PAPARIAN: Maybe we should hear from
8 legal counsel.

9 STAFF COUNSEL BLEDSOE: Mr. Chairman, thank you.

10 The issue here is an enforcement action by the
11 local enforcement agency.

12 In an extraordinary situation such as the
13 temporary emergency the local enforcement agency decides,
14 in conjunction with the operator, that it's necessary to
15 modify one of the terms and conditions of the permit. The
16 Board has approved that permit with those existing terms
17 and conditions. So we feel that it's appropriate that
18 when any of those conditions is going to be changed for
19 this extraordinary circumstance, the Board through its
20 executive director has the ability and the authority to
21 modify, suspend, et cetera, that stipulated agreement.

22 It remains, however, an LEA enforcement action.
23 So if the LEA or the operator is so unhappy with the way
24 the executive director has modified the permit, they can
25 terminate that stipulated agreement. That would be one of

1 their choices.

2 The second choice is, if it is appealed by
3 someone, it would go to the local hearing panel. And I
4 believe it would follow the normal procedure of, you know,
5 appeal at the local level, then appeal to the Board.

6 Yet, keep in mind, that the stay provision would
7 still apply. However, in this -- the stay under Code
8 Section 45017 does not apply when the local enforcement
9 agency makes a finding that, you know, the stay would harm
10 public health and safety. And so since the whole purpose
11 of the temporary emergency is to, you know, protect the
12 public health and safety, I'm not too concerned with the
13 stay affecting these stipulated agreements.

14 But the bottom line is this stays with the LEA as
15 an enforcement order through the appeal process.

16 CHAIRPERSON PAPARIAN: Mr. Medina had a question.

17 COMMITTEE MEMBER MEDINA: No, I didn't have a
18 question so much as saying I agree with the executive
19 director reviewing all EA approvals. However, I do feel
20 that it is the Board's responsibility in the case where
21 the agreement would cause harm to public health and safety
22 and the environment, and I think it's up to the Board to
23 condition, limit, suspend, or terminate an operator's use
24 of a stipulated agreement. We do meet monthly.

25 CHAIRPERSON PAPARIAN: We have a couple other

1 witnesses who will --

2 MR. MALAN: Thank you.

3 CHAIRPERSON PAPARIAN: Thank you, Justin.

4 Charles White, Waste Management.

5 MR. WHITE: Thank you, Mr. Chairman, members of
6 the Committee.

7 I was before you on this same issue last month.
8 I feel a bit as though I'm beating a dead horse, but I
9 hope the horse is not me, but we'll -- I am concerned
10 about the language of the definition of "stipulated
11 agreement," and that it is related to the same issue
12 that -- similar issue anyway to what was just being
13 discussed.

14 And the question through the whole development of
15 this rule-making package, which has been the subject of
16 some debate and discussion from the very beginning -- I
17 remember Mr. Jones and Mr. Paparian both being involved in
18 some of the early discussions when we were first crafting
19 these regulations -- and the question was, is this based
20 upon enforcement authority or is it based upon permit
21 authority?

22 And I think the solid waste industry felt that
23 there was adequate permit authority in the statute to
24 allow this kind of stipulated agreement to go forward.
25 However, the staff had the position at the time, and I

1 believe appears to maintain it vehemently, that the
2 regulations should be based upon the enforcement authority
3 in the statute.

4 And although it may seem like a minor point, one
5 of the consequences of having it as an enforcement-based
6 action is that a stipulated agreement if appealed would be
7 subject to a stay, which is something that we've all been
8 very much concerned about. Not that we object to these
9 stipulated agreements being subject to an appeal, but
10 whether or not they would be subject to a stay.

11 And If you look at the definition in the language
12 of "stipulated agreement," there is this key provision
13 about what appeal processes are available when you are in
14 fact appealing a stipulate agreement.

15 Early on in the process when this language was
16 informal, the earlier language made reference Public
17 Resources Codes Part 5 and 6. We had concerns about
18 reference to Part 5 because that was the enforcement
19 language and which provided for stays in the event of
20 appeal.

21 Actually when you went out to public notice, you
22 changed it, you changed it to Parts 4 and 6. And last
23 month I asked the question, perhaps injudiciously on my
24 part, "Were you serious about changing it to 4 and 6? And
25 if you were, that would probably be okay because it's part

1 5 that we have a concern about because that makes it
2 subject to a stay if appealed."

3 And as it turned out you didn't mean to call it
4 Part 4 and 6, you really meant to call it Parts 4, 5, and
5 6, which you have gone back and made the change -- staff
6 has gone back and made the change.

7 I would argue that you should go back to Parts 4
8 and 6, as is consistent with the public notice, because
9 that gives you plenty of authority for the stipulated
10 agreement and it gives you adequate authority for appeals,
11 but it does not make them subject to stays because stays
12 are solely in Part 5, not Parts 4 and 6.

13 And this change right now is being put to you as
14 a minor change. I would argue that it's certainly not a
15 minor change. This is a very key point on how the appeal
16 process works and what parts of the PRC you specifically
17 reference that would trigger a particular process if and
18 when an appeal occurs.

19 So my first request is for you to go back and
20 just change it to Parts 4 and 6, as was public noticed.
21 And that gives you plenty of authority for a stipulated
22 agreement and for an appeal, but not one that could be
23 stayed.

24 However, if you do proceed with having to make
25 the change, which I believe to be a significant change of

1 adding Part 5 back in, which was not publicly noticed, you
2 would need to go through a formal public notice to add in
3 Part 5 because it is a significant change, not a minor
4 adjustment.

5 But my preference is just to leave out Part 5 and
6 go back to Part 4 and 6, as was publicly noticed, so that
7 we can proceed with these regulations, it can be adopted,
8 you've got plenty of authority for a stipulated agreement,
9 you don't have to worry about this issue of being subject
10 to a stay in the event of appeal.

11 Thank you very much.

12 CHAIRPERSON PAPARIAN: Mr. Bledsoe, I think we're
13 keeping you on your toes today.

14 STAFF COUNSEL BLEDSOE: Thanks, Mr. Chairman.

15 Firstly on the question of changing the draft,
16 adding Part 5 back in to the list there we see as a
17 completely nonsubstantial change. It doesn't impose any
18 additional burdens on anyone. It doesn't change the fact
19 that this notice has to do with these particular regs and
20 this enforcement authority.

21 The reason honestly that we included Part 5 back
22 in the list was, Mr. White had raised this question which
23 in his mind, you know, left it unclear as to whether --
24 well in his mind that meant that Part 5 was excluded, the
25 enforcement procedures laid out in Part 5 were excluded.

1 That was not our intent. I don't think that --
2 that had not been our reading of the way these regulations
3 worked. The appeals procedures are actually set out
4 primarily in Part 4, which is the part of the Integrated
5 Waste Management Act that involves the permitting process,
6 and that includes the AB 59 appeal process, the primarily
7 one to the hearing panel. Part 6 includes appeals to the
8 Board, which is the second step of the appeals process.
9 Part 5 is primarily enforcement tools -- pardon me -- the
10 enforcement measures. And it is in that section where
11 this automatic stay kicks in.

12 But the language of the statute is very clear,
13 that if you have an enforcement action, it's subject to
14 the stay in Part 5.

15 So whether or not we listed Part 5, it was our
16 interpretation that the stay applied. But to avoid this
17 confusion -- and, you know, I think it's beneficial to
18 have this discussion on the record so that everybody knows
19 what we're talking about -- we decided that it was clearer
20 if we simply listed Parts 4, 5, and 6. So that was the
21 thinking behind adding that language back in. And, as I
22 say, we do not feel that was a substantive change that
23 required additional public noticing.

24 CHAIRPERSON PAPARIAN: Okay. Next speaker I have
25 is Don Gambelin, NorCal.

1 MR. GAMBELIN: Good morning. Don Gambelin with
2 NorCal Waste Systems.

3 I think Chuck White has done a nice job of
4 addressing our concerns also.

5 To have a stipulated agreement subject to a stay
6 and call that insubstantial strikes me as odd. I think it
7 is a substantial change. It certainly is for those of us
8 in the industry that have to potentially utilize this
9 regulation.

10 And also I just want to make a general comment
11 that our understanding, and we participated in all the
12 workshops on this item, is that the stipulated agreement
13 was really meant to be an enforceable action, but not an
14 enforcement action. We have to remember the basis for the
15 stipulated agreement. And it's when an operator needs
16 some relief or some change, due to a temporary emergency,
17 from their permit terms and conditions. And they actually
18 go to the LEA to request that stipulated agreement. That
19 stipulated agreement then becomes an enforceable document.
20 But it just doesn't make sense to consider it to be an
21 enforcement action when an operator actually goes to the
22 LEA to say, "I want you to take enforcement action on me."

23 So, again, I'm trying to point out in a very
24 general sense what the whole approach to this was,
25 particularly from the industry side. And we certainly

1 seem to have lost site of that a bit when we start to
2 refer to this as enforcement action versus an enforceable
3 action.

4 Thank you.

5 CHAIRPERSON PAPARIAN: Okay. Next I have Mr.
6 Bledsoe.

7 STAFF COUNSEL BLEDSOE: Mr. Chairman, just real
8 briefly on that point.

9 Again, just to recall to the Committee's mind,
10 the reason that the Legal Office is insisting that these
11 stipulated agreements be considered as a type of
12 enforcement action is because the only authority that we
13 would have under the statute for the LEA to issue in a
14 stipulated agreement is Section 45011, which is an
15 enforcement action to impose a compliance schedule upon an
16 operator.

17 So that Section 45011 is the basis on which this
18 entire regulatory package rests.

19 CHAIRPERSON PAPARIAN: Next I have Curt Fujii
20 from Allied Waste.

21 MR. FUJII: Thank you. I'd like to add my
22 support to the thoughts and sentiments expressed by my
23 colleagues from Waste Management and NorCal, and to add my
24 own personal emphasis on the issue of an enforceable
25 agreement or action versus an enforcement action.

1 Another item that is of significant concern has
2 to do with the disclosure requirements in other states.
3 Many other states require companies such as ours to
4 disclose any enforcement actions taken against any of our
5 subsidiaries in any state in the country.

6 And by identifying a stipulated agreement as an
7 enforcement action, we are being placed in the position of
8 being penalized for coming forward, as Mr. Gambelin
9 identified and described, to cooperatively craft with our
10 LEA an appropriate mutually agreeable response to a
11 temporary emergency.

12 This is also a concern with responding to RFP's
13 for services or SOQ's. Disclosures of enforcement actions
14 taken against your company are becoming more and more
15 common. So this is an item of extreme concern for us and
16 I think for everyone in the industry. And I think we put
17 a lot of time and effort into agreeing that this would be
18 identified as an enforcement -- or as an enforceable
19 agreement, not an enforcement action, during prior
20 discussions.

21 Thank you.

22 CHAIRPERSON PAPARIAN: Thank you.

23 Any additional questions, comments from Committee
24 members?

25 Mr. Cannella.

1 COMMITTEE MEMBER CANNELLA: I just have a
2 question of whomever, since I wasn't a part of all the
3 discussion.

4 But when an LEA issues a temporary emergency
5 declaration, do they have to report to any local elected
6 body that they've issued this? Is there any
7 communications to anybody other than the stipulated
8 agreement between the operator and the LEA?

9 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Mr.
10 Cannella, no, this is not a situation where the LEA
11 actually declares the emergency. The declared emergency
12 provisions that we spoke about a little bit earlier deal
13 with where a Board of Supervisors or the Governor declares
14 an emergency.

15 COMMITTEE MEMBER CANNELLA: Yeah, we're talking
16 temporary emergencies.

17 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: This is a
18 temporary -- it's just a situation that arising, it's
19 unforeseen. And the operator approaches the LEA and says,
20 you know, "You know, you never would have thought this
21 would happen, but it happened. And I need to make some
22 adjustments here."

23 COMMITTEE MEMBER CANNELLA: Right. But my
24 question still is a valid one. Do they make any
25 notification to the Board of Supervisors, the city

1 councils, anybody?

2 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: They're not
3 required to under this reg package, as I recall.

4 COMMITTEE MEMBER CANNELLA: They're not required.
5 Okay.

6 But the only reason I ask is so then I have no
7 problems with the executive director's involvement that
8 they may. Doesn't say they will; it says they may. And
9 since we don't have any chain of command or authority up
10 the local level other than the stipulated agreement for
11 the temporary emergency between those two folks, then I
12 don't have any problems, Mr. Chairman, with the language
13 as it is that may allow the executive director to be
14 involved.

15 CHAIRPERSON PAPARIAN: Okay. Let me just ask a
16 little process question here. We have a comment deadline
17 today, right?

18 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: That's on a
19 CEQA document.

20 CHAIRPERSON PAPARIAN: On the CEQA document.

21 So if we move forward, we should not --

22 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: You would
23 be making a recommendation to the full Board. You could
24 still make the recommendation, you know, contingent upon
25 the closure of the comment period and no further issues

1 being raised that need to be addressed, that this
2 Committee would recommend to the full Board that the Board
3 certify the Negative Declaration and adopt the Regulation
4 package.

5 CHAIRPERSON PAPARIAN: Okay.

6 Mr. Jones.

7 COMMITTEE MEMBER JONES: Mr. Chair, I'm going to
8 move these. I do think though that it needs to be stated
9 while Kathryn and Mr. Bledsoe and others, you know, found
10 the area that they could do this in, it was pretty clear
11 that we've always talked about this being an enforceable
12 agreement, just for the reasons that Mr. Fujii had talked
13 about. And clearly I think that's got to be honored by
14 this Board. I know it was honored by that working group,
15 because it was an issue that changed in the middle of the
16 process. And I think we brought it back to what we had
17 already agreed to. And I think it is critical because
18 it's a proactive exercise.

19 It's like somebody ends up putting in 3,000 homes
20 and identifies that your transfer station's going to
21 handle the waste. And they start building and you start
22 the permit process. And it may take longer to get the
23 permit through than it does to build 3,000 homes. And if
24 you're the only facility in a waste shed, you're dead
25 meat.

1 So this whole thing was about the fact that the
2 system takes so long to go through, that to deal with
3 issues -- you know, you've got to have a mechanism. And
4 one thing I know Mr. Paparian and I have talked about
5 hard, is it really -- I don't think it can be used. When
6 somebody wants to get an advantage over a competitor to go
7 out and get a waste stream that they hadn't already
8 contemplated, that's not what this is for. And I remember
9 we had that discussion and said, you can't use it, you
10 know, for competitive advantage when it comes to going
11 after something you never had.

12 But, when you've got things happening in a waste
13 shed, this is a responsible Regulation package. But I
14 don't think the industry should be hurt by having it as
15 a -- it's got to be treated as an enforceable agreement.
16 Otherwise you're asking the industry to state that they
17 are part of a notice and order or part of a stipulated
18 agreement. Somehow we've got to make sure that that
19 isn't -- them trying to comply what's going on in a local
20 jurisdiction where they have an obligation to provide
21 solid waste services and things change should not be the
22 basis for them not getting a permit somewhere else because
23 they've had to put down that this is a noticed -- or a
24 stipulated agreement that somehow is an enforcement
25 action.

1 So I don't know how we fix that, but that's got
2 to be, I think -- I think that's a reasonable request. I
3 think it went to the heart of what we talked about, right?

4 CHAIRPERSON PAPARIAN: I think I may have to ask
5 legal counsel for some clarification here. But my
6 recollection is that we talked about this as an
7 enforceable action. But the authority under which we
8 could allow these enforceable actions to take place was
9 the enforcement authority. If it wasn't the enforcement
10 authority, it would be the permitting authority. And if
11 it was the permitting authority, we would need to perhaps
12 move towards a process that was more like getting a new
13 permit than doing something very quickly, which you could
14 do under the enforcement authority.

15 I hope I haven't messed up the legal
16 interpretation there too much, Mr. Bledsoe. Do you want
17 to add anything or --

18 COMMITTEE MEMBER JONES: And I wasn't suggesting
19 anything different. That's I thought what I had said,
20 because that's -- that was the premise, but it was caveat.

21 CHAIRPERSON PAPARIAN: Yeah, but -- I mean
22 ultimately if something is challenged, it's being
23 challenged under the enforcement authority of the Board as
24 opposed to the permitting authority of the Board.

25 STAFF COUNSEL BLEDSOE: Correct.

1 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: I want to
2 be responsive to Mr. Jones' concerns. Because if there's
3 an expectation that staff can or should be doing
4 something, then I want to be clear on what that is.

5 I don't think there's language that we can add to
6 the regs to change what Mr. Paparian just described as the
7 authority. I would suggest that an operator when asked to
8 explain in a response to an RFP or some other disclosure
9 document, that they make reference to the language that's
10 in the regulations where we are calling it an enforceable
11 document, and explain how that is different from a normal
12 enforcement order, and reflect the intent that the Board
13 has stated many times on many transcripts of what this is
14 and what it is not, recognizing of course that the
15 authority derives from the enforcement authority.

16 COMMITTEE MEMBER JONES: And I don't disagree
17 with that. I'm just saying that if the industry when
18 they're going out and applying for -- or part of the mix
19 for response to an RFP or an RFQ that if they in fact do
20 put down that this is an enforceable agreement, under
21 whatever regs, and want to say that it's the mechanism --
22 through stipulated agreements the mechanism for temporary
23 change in the State of California, is that an accurate
24 thing to say?

25 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: I think

1 based on what's on our transcripts here, that's clearly
2 the intent of the Board.

3 CHAIRPERSON PAPARIAN: A temporary change in the
4 situation of the temporary emergency.

5 COMMITTEE MEMBER JONES: That's what I'm saying,
6 yeah.

7 CHAIRPERSON PAPARIAN: Okay. I think Mr. Malan
8 wanted to have a brief last word.

9 MR. MALAN: Very brief.

10 Mr. Chairman, again just for clarification. I
11 think where the LEA and the industry may be somewhat in
12 synch, may be that's just, you know, memory lapse. But I
13 think what we were looking at -- this is actually a
14 permitting issue, not an enforcement issue. And, as such,
15 it's essentially a revision to the permit. This is
16 something that has triggered a revision to the permit.
17 It's not something that has been required by the LEA or an
18 enforcement action. It's something that conditions have
19 changed and there needs to be a revision to the permit.
20 If it's considered a revision to a permit, then it is a
21 permit issue, an enforceable permit issue.

22 If it's also a revision to the permit, we can run
23 through the review by the Board in its normal process.
24 And you don't get into the situation of someone on the
25 Board having to second guess a, quote-unquote, enforcement

1 action. That's really -- where I see the nexus is between
2 the two issues. And if there was some way of crafting it
3 in such a way that it is part of the permit revision
4 process, you'll resolve both the issues that the industry
5 have and the LEA has.

6 Thank you.

7 CHAIRPERSON PAPARIAN: Thank you.

8 Mr. Jones, you were ready to move this forward.

9 COMMITTEE MEMBER JONES: Yeah. I mean, I do -- I
10 am going to move this forward because everybody worked too
11 hard to have this in place. And while there's still some
12 issues that may need to be looked at, including the one
13 about, you know, the permit view -- maybe we ought to look
14 at that and see if there's a need to change -- I know
15 we've got legal advise that we couldn't do it that way or
16 that we'd have to --

17 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Well,
18 recall we talked about at the time was if we were going to
19 pursue this as a change to the permit, that what we're
20 really talking about was some kind of a temporary permit,
21 and that we don't have statutory authority to do that.
22 Another case, as we were talking earlier with Mr.
23 Cannella, we just don't have the statutory or regulatory
24 authority to engage in temporary permits, so you got to go
25 through the whole permit process.

1 COMMITTEE MEMBER JONES: Right. So what I'm
2 saying is maybe we just need to keep that. And as we're
3 trying to figure out ways to streamline, maybe that's a
4 way that we take care of these issues in the future if we
5 do make alleged proposal.

6 Mr. Paparian, I'm going to move adoption -- I
7 know that the first one is for the Neg Dec, so I'm going
8 to say this pending any substantial receipt of comments
9 today, which is the close, I want to move adoption of
10 Resolution 2002-739, consideration of adoption of a
11 Negative Dec (Clearinghouse Number 2002112004) and the
12 proposed regulations for waiver of terms and conditions
13 during temporary emergencies.

14 CHAIRPERSON PAPARIAN: Is there a second?

15 COMMITTEE MEMBER MEDINA: Second.

16 CHAIRPERSON PAPARIAN: There's a motion and a
17 second.

18 Secretary, call the roll.

19 SECRETARY FARRELL: Cannella?

20 COMMITTEE MEMBER CANNELLA: Aye.

21 SECRETARY FARRELL: Jones?

22 COMMITTEE MEMBER JONES: Aye.

23 SECRETARY FARRELL: Medina?

24 COMMITTEE MEMBER MEDINA: Aye.

25 SECRETARY FARRELL: Paparian?

1 CHAIRPERSON PAPARIAN: Aye.

2 COMMITTEE MEMBER JONES: Mr. Chair?

3 CHAIRPERSON PAPARIAN: Mr. Jones.

4 COMMITTEE MEMBER JONES: Ill move a adoption of
5 Resolution 2002-740, consideration of adoption of
6 regulations for the waiver of terms and conditions during
7 temporary emergencies.

8 CHAIRPERSON PAPARIAN: Is there a second on that
9 one?

10 COMMITTEE MEMBER MEDINA: Second.

11 CHAIRPERSON PAPARIAN: Second by Mr. Medina.
12 Secretary, call the roll.

13 SECRETARY FARRELL: Cannella?

14 COMMITTEE MEMBER CANNELLA: Aye.

15 SECRETARY FARRELL: Jones?

16 COMMITTEE MEMBER JONES: Aye.

17 SECRETARY FARRELL: Medina?

18 COMMITTEE MEMBER MEDINA: Aye.

19 SECRETARY FARRELL: Paparian?

20 CHAIRPERSON PAPARIAN: Aye.

21 Now, 4-0 to the full Board.

22 Do we want to place that on consent or -- okay.

23 Move that to consent.

24 And I think it's probably time to take a break.

25 We'll take a 10 minute --

1 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Mr.

2 Chairman --

3 CHAIRPERSON PAPARIAN: Yes, Ms. Nauman.

4 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: -- quickly
5 before we close.

6 Counsel just advised me that process-wise in the
7 past because we're looking for the Board to vote on the
8 CEQA document, so something's coming from the Legal
9 Office, that they prefer that we not put rate packages on
10 consent. So that you'll have a roll call vote on CEQA
11 document itself rather than a consent calendar vote.

12 It's a distinction that they're making. So in
13 that case we would not put it on consent.

14 CHAIRPERSON PAPARIAN: Okay. Put it on the
15 regular agenda, but with a recommendation to approve.

16 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Thank you.

17 CHAIRPERSON PAPARIAN: Okay. With that we'll
18 take a 10 minute break and be back at 10 to 11.

19 (Thereupon a recess was taken.)

20 CHAIRPERSON PAPARIAN: We'll get started again.

21 Any ex partes?

22 Mr. Jones.

23 COMMITTEE MEMBER JONES: Kelly Aster, Sean and
24 Evan Edgar. I said high to Judy Ware, Gary Liss, and
25 Chuck White, and Mark Aprea. I think that's it.

1 CHAIRPERSON PAPARIAN: Almost everybody here.

2 COMMITTEE MEMBER JONES: That's almost everybody
3 here.

4 CHAIRPERSON PAPARIAN: Mr. Medina.

5 COMMITTEE MEMBER MEDINA: None to report.

6 CHAIRPERSON PAPARIAN: Mr. Cannella.

7 COMMITTEE MEMBER CANNELLA: I had a conversation
8 with Shane Gusman of the Teamsters.

9 CHAIRPERSON PAPARIAN: And I spoke with Mark
10 Aprea regarding public noticing issues.

11 Okay. Next on the agenda.

12 Mr. Walker.

13 ACTING DEPUTY DIRECTOR WALKER: Thank you.

14 Item F is consideration of the adoption of
15 revised regulations for landfill closure and postclosure
16 maintenance. This is December Board Item 26.

17 Mike Wochnick will give the staff presentation.

18 MR. WOCHNICK: Good morning, Mr. Chairman,
19 members of the Committee.

20 As you recall, last month the Committee directed
21 staff to notice changes to the regulations for an
22 additional 15-day comment period.

23 That comment has come and gone. We have received
24 no comments during that time period. And staff recommends
25 approval of the regulations as proposed.

1 I be happy to answer any questions you might
2 have.

3 CHAIRPERSON PAPARIAN: Any questions?

4 Mr. Jones.

5 COMMITTEE MEMBER JONES: Thanks, Mr. Chair.

6 I'll move adoption of Resolution 2002-741,
7 consideration of the adoption of revised regulations for
8 landfill closure and postclosure maintenance.

9 COMMITTEE MEMBER MEDINA: Second.

10 CHAIRPERSON PAPARIAN: There's a motion and a
11 second.

12 Secretary, call the roll.

13 SECRETARY FARRELL: Cannella?

14 COMMITTEE MEMBER CANNELLA: Aye.

15 SECRETARY FARRELL: Jones?

16 COMMITTEE MEMBER JONES: Aye.

17 SECRETARY FARRELL: Medina?

18 COMMITTEE MEMBER MEDINA: Aye.

19 SECRETARY FARRELL: Paparian?

20 CHAIRPERSON PAPARIAN: Aye.

21 Now, under what we just discussed before the
22 break, would these be nonappropriate --

23 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: No, this
24 can go on consent.

25 CHAIRPERSON PAPARIAN: Okay. Let's move this to

1 consent then.

2 Next we have the C&D item.

3 And just to remind everybody, if you want to
4 speak on this item, make sure you've filled out a speaker
5 slip in the back of the room and handed it to Ms. Farrell.

6 ACTING DEPUTY DIRECTOR WALKER: Thank you.

7 Item G is discussion and request for direction
8 for rulemaking direction on noticing revisions to the
9 proposed construction and demolition and inert debris
10 processing tiered regulations for an additional public
11 comment period. This is December Board Item 27.

12 And I've got a couple introductory comments
13 before I hand it off to staff.

14 This Regulation package continues to have intense
15 interests from stakeholders and requiring a lot of really
16 good staff work. I'd just like to express my appreciation
17 for staff and legal staff on this.

18 At the November Committee meeting staff presented
19 changes for consideration of an additional comment period
20 based on the 4 to 2 vote direction from the Board in
21 September.

22 The Committee directed staff to hold off on the
23 comment period and bring the item back for consideration
24 this month with changes.

25 The Committee changed and provided direction in

1 two specific areas:

2 One, is to change the threshold under which
3 construction and demolition and inert for CDI processing
4 facilities will require a full solid waste facility permit
5 to change from over 500 tons per day to over 100 tons per
6 day, but allow existing facilities in the transition
7 period of 3 to 4 years where they may operate under a
8 registration permit.

9 The second area is to incorporate a definition of
10 construction and demolition debris as a subset of waste
11 that is clearly neutral with respect to franchise
12 agreements.

13 A meeting with over 30 broadly represented
14 stakeholders was conducted Wednesday, November 20th, to
15 discuss the Committee's direction. And the meeting was
16 very helpful. We had a really pretty good, broad
17 representation. And this is helpful in developing a
18 specific regulatory language under consideration today.
19 And this language was handed out shortly after.

20 I'd like to remind the Committee that it is
21 important that staff get direction this month to go
22 forward with the additional formal comment period. In
23 order to meet the Office of Administrative Law timelines
24 we need the final adoption of this Regulation package no
25 later than March.

1 If we cannot meet the OAL deadline, we'll have to
2 start this process over again. And this had already
3 occurred back in 1999. So we really don't want to have
4 that happen again.

5 At this time I'd like to hand it off to Mark de
6 Bie and Allison Reynolds to provide the staff
7 presentation.

8 MS. SPREADBOROUGH: Good Morning, Committee Chair
9 and Committee members. My name is Allison Spreadborough.

10 Staff have responded to the direction given from
11 the Committee in November by redrafting the proposed
12 regulations. Staff also met with stakeholders to receive
13 input prior to finalizing the redraft, which is dated
14 November 25th, 2002.

15 It is clear that not all parties agree with the
16 language contained in the redrafted regulations.
17 Therefore, staff will provide the Committee several other
18 options to consider for inclusion for the 15-day comment
19 period.

20 As directed by the Committee, staff have included
21 two definitions of construction and demolition. Staff is
22 proposing to use the existing C&D waste definition in
23 Article 4 and a modified definition for C&D debris in
24 Article 5.9.

25 The definition of C&D debris is intended to be

1 used only for determining facility types and tiers.

2 Staff have included several statements in the
3 redrafted regulations intended to clarify that the
4 definition of C&D debris should not be used for any
5 purpose including franchise agreements.

6 It should be noted that if a site is found to be
7 receiving C&D waste and not C&D debris, it will be
8 required to receive a full transfer processing permit.

9 Staff have also redrafted regulations to include
10 a phase-in using a three-year registration tier for large
11 volume CDI processing facility to a full permitted tier
12 based on a 100-tons-per-day permit threshold.

13 This version of the regulations was sent out to
14 listed stakeholders on November 26th. It should be noted
15 that staff have included a phase-in for only existing
16 sites that are handling C&D debris as well as Phase-in for
17 existing sites that are handling C&D waste.

18 Relative to the three-year phase-in for C&D sites
19 several stakeholders indicated that there should be some
20 ability to adjust for delays in the permitting process
21 that are beyond the control of the operator.

22 Staff is supportive of the suggestion for the
23 ability of the LEA to extend the three-year period for up
24 to two additional years if it can be demonstrated that the
25 delays were indeed outside the control of the operator and

1 that there has been a good faith effort to comply with the
2 requirements.

3 When consulting with stakeholder groups in our
4 market division, staff found that some continue to find
5 that the 100 tons per day threshold is too low. It
6 appears that the C&D debris industry may wish the
7 Committee to choose a tonnage threshold from between 100
8 tons per day and 500 tons per day for a placement in full
9 permit tier.

10 Staff would like to point out to the Committee
11 that at a 100-ton-per-day threshold there is little, if
12 no, difference in regulatory oversight for requirements
13 between a C&D processing facility and a municipal solid
14 waste processing facility. It would be more efficient to
15 group sites handling C&D debris as well as C&D waste
16 completely under Article 6, transfer processing
17 requirements.

18 Any issues relative to residence time of
19 unprocessed material could still be addressed in another
20 manner. However, by regulating these sites as transfer
21 processing operations or facilities, they will be able to
22 receive the universe of nonhazardous waste.

23 This option first garnered support from local
24 enforcement agencies and some waste industry
25 representatives on the onset of this regulatory package.

1 However, as staff was directed to prepare a rulemaking
2 package on construction and demolition debris based on its
3 unique nature, Board staff set on a goal apart from that
4 of folding these facilities into article 6.0.

5 This concludes staff presentation. However,
6 staff is prepared to provide the Committee with additional
7 details regarding the proposed redrafted regulations as
8 well as further clarification regarding the approaches
9 we've just outlined, including a change to over 100 tons
10 per day, an extension to the three-year phase-in, as well
11 as how C&D debris sites could be regulated under the
12 transfer processing requirements.

13 MR. DeBIE: Thank you, Allison.

14 Mark de Bie with Permitting and Inspection, just
15 to add that the version that was sent out to stakeholders
16 on the 26th, that's dated the 25th, includes all of the
17 changes to the regulations that staff have made based on
18 the comments received during the 45-day comment period,
19 both written and verbal comments during the public
20 hearing, as well as response to the direction from the
21 Committee to address those two main issues on the
22 definition and the threshold limits.

23 Just to clarify and make clear in the Committee's
24 minds, as Allison indicated, there isn't -- in our
25 judgment there isn't, you know, common agreement on the

1 current version of the regs dated November 25th, and that
2 several ideas have been floated how to improve upon them.

3 One, as Allison indicated, was to include an
4 extension of the three-year phase-in to accommodate
5 operators that encounter unforeseen circumstances or
6 things beyond their control. That is not currently in the
7 version of the regs. But it has been suggested.

8 Again, there is not a complete agreement on the
9 100 tons. There have been various numbers floated to
10 staff, 200, 300. There's still some stakeholders that are
11 aligned with staff at 500, or 750 even.

12 So that should be part of the Board's
13 consideration -- or the Committee's consideration too is
14 that. Again, the version in front of the Committee has
15 the threshold at 100.

16 And then staff just wanted to provide an
17 observation to the Committee that a C&D processing
18 facility at 100 tons per day will be regulated in effect
19 the same way as an MSW transfer station.

20 And as Allison indicated, LEA's have indicated
21 that they would prefer to see regulations more
22 streamlined, less complicated. And so certainly one way
23 of accomplishing that request or being responsive to that
24 request is just to fold C&D processing facilities into the
25 universe of transfer and processing facilities, and not

1 make a distinction between the two types of facilities.

2 If that direction was taken, basically any
3 reference to mixed C&D waste stream being handled at a C&D
4 facility would be removed and a reference would be made to
5 the transfer station requirements in Article 6. All of
6 the other aspects of the regs reflective of chip and
7 grind, inert handling, and those things would remain. It
8 would just be the mixed C&D waste stream that would be
9 shifted over.

10 Again, the version of the regulations that we've
11 provided you does not include that. It holds out C&D
12 processing facilities as a separate unique type of
13 facility and not an MSW-transfer-station-type facility.

14 Thank you.

15 CHAIRPERSON PAPARIAN: Okay. You've laid out a
16 couple of options there, one being move in the direction
17 of the transfer and processing facility and having
18 everything included under that. And another option is to
19 somehow revisit the question of the tonnage threshold for
20 a registration versus a full permit.

21 Do you have any recommendation from the staff at
22 this point on either of those directions?

23 MR. DeBIE: It's up to the Committee. Staff has
24 followed your direction to do 100. And so we've included
25 that. We've heard from various stakeholders -- and I

1 don't know how much common agreement there is -- that 100
2 is still too low, and they would prefer to see a 200 or a
3 300 level. I need to I guess in response indicate that
4 staff is still assured that 500 is an adequate level to
5 make a distinction between a registration and full permit
6 if you're handling C&D debris.

7 So --

8 CHAIRPERSON PAPARIAN: But staff is still --

9 MR. DeBIE: -- still at 500. But we followed the
10 Committee's direction to move it down to 100.

11 CHAIRPERSON PAPARIAN: Okay. Mr. Jones.

12 COMMITTEE MEMBER JONES: As I recall the last
13 time that we had this discussion, it was after staff went
14 out and visited 19 facilities that could be called C&D
15 processors or C&D transfer stations or C&D accumulators or
16 nonpermitted C&D whatever's. It became clear that while
17 some did operate by the rules, a lot of them had garbage
18 mixed in. And it was one of the things that you alluded
19 to when you made your comments at our last meeting, that
20 in fact these weren't C&D folks, that they were full of
21 garbage. And that it was actually a lot of the ones that
22 talked about how pure they were that you found garbage at.
23 And I think it was the basis of why you changed some of
24 your views, as you told me about it. And also the way
25 that a couple of LEA's who thought that it ought to be

1 treated differently were absolutely amazed when they saw
2 the amount of garbage that was in this stuff.

3 So I'm still concerned when I hear you talk about
4 C&D debris and C&D waste as two different things when in
5 fact if these things operated by the definition of that
6 was given, there wouldn't be a problem. But your own road
7 trips showed that they don't operate within those -- a lot
8 of them don't operate within those same parameters. And
9 who whole idea of a regulatory package is to ensure health
10 and safety. And you can't rely on what somebody calls
11 themselves to determine what tier they're in.

12 So I'm a little confused that, you know, you
13 were -- an LEA asked you at one facility, "Do you call
14 this C&D?" And you guys said, "No, we call it garbage."
15 And she said, "Yeah, good, because I call it garbage too."

16 So I mean it can't be both ways. And it sounds
17 to me like you're still making a determination between C&D
18 waste and C&D debris. And I don't understand what that
19 definition -- what that difference is.

20 MR. DeBIE: I think what you've summarized is a
21 fair assessment of the discussion -- the past discussion.
22 The distinction currently as the definitions have been
23 proposed is in the differences between C&D waste and C&D
24 debris; is that to qualify as a C&D debris processing
25 facility, you would be only taking solid waste that is

1 very low in putrescibles, less than one percent
2 putrescible, and comes only from a construction/demolition
3 site and not from any other site. It includes certain
4 kinds of materials that are listed and does not include
5 other kinds of materials that are listed. Certainly
6 there's a strong indication in the definition that it
7 should never be hazardous waste. It does also include
8 some flexibility to receive C&D-like material. And that's
9 included in the debris definition.

10 C&D waste, basically the definition just says
11 that it's material generated at a construction and
12 demolition site. No limits on putrescible, no limits on,
13 you know, any specific types of material or that sort of
14 thing. So it's a much more broader definition. But it is
15 the existing definition. We're not changing that.

16 ACTING DEPUTY DIRECTOR WALKER: I'd like to just
17 add that I think some of the observations showed that,
18 with the tight definition, that some of the facilities
19 that they observed are going to fall under regular
20 transfer processing station requirements because of some
21 of the high level putrescible wastes, the types of waste
22 that they saw out in the field in some of these cases. So
23 when we do establish a clear definition, then I think some
24 of those facilities out there are going to be --
25 regardless, they're going to fall under the transfer

1 processing station regs -- regular transfer processing
2 station regulations.

3 COMMITTEE MEMBER JONES: Right. And so my
4 question is -- somebody's breaking the rules.

5 (Laughter.)

6 COMMITTEE MEMBER JONES: My question is that --

7 (Laughter.)

8 COMMITTEE MEMBER JONES: My question is that the
9 ones that are going to fall under a regular transfer
10 station reg because of the putrescibles or because of the
11 mixed waste stream are the same ones that were saying that
12 they're C&D processors and should be at 750 tons and not
13 be regulated. Right?

14 MR. DeBIE: There are a few like that and there
15 are a few that can qualify under the C&D debris and
16 maintain that because of the low putrescible nature. So,
17 yes, there are some on both sides.

18 COMMITTEE MEMBER JONES: Okay. And that's my
19 point, is that we're doing this -- we can't do this in a
20 vacuum and we haven't done it in a vacuum. You actually
21 went out and looked and saw that everybody that said they
22 were pure weren't pure. And some were pure. But the
23 problem is it's a statewide regulatory package to ensure
24 health and safety, and it just -- I mean you've got to
25 stay that course. You know, I mean I'm hearing of Board

1 members who are being absolutely assaulted. But a lot
2 of -- you know, because of a change in treatment. And I
3 was one of them. You know, I was looking at 400 or 500
4 tons based on a tight definition that should have fit
5 every legitimate C&D recycler in the nation, and it was
6 that same group that opposed it, said they couldn't
7 operate under those conditions.

8 So they lost my vote even though -- the place I
9 came from or the folks that I came from weren't completely
10 supportive of my point of view. But then when the folks
11 that were trying to help sit there and tell me that they
12 can't support it either, I just want to make sure that as
13 we're going through this there's a clear line, because
14 that is what has been absent here, this clear line. And
15 the line is -- you're not -- you know, just because you
16 call yourself something doesn't mean that's what you are.

17 And there's got to be the test. And when we
18 start looking at putrescible and saying it's only this
19 much putrescible, it's after -- it's one percent in a
20 month. So the guy that's hauling in 2,000 tons of C&D a
21 day, that's a whole lot of putrescible waste, folks. So
22 you need to, you know -- for me I've always felt that it
23 should be zero tolerance on food waste and putrescible. I
24 mean it's a C&D package. It's not a municipal solid waste
25 thing. It should have a zero putrescible, because it's

1 C&D. There's no definition of food waste or any other
2 putrescible waste in C&D. Yet we're willing to go with a
3 percent. But a percent of 2,000 tons a day, do the math,
4 that's a lot of putrescible waste. And it's hauling
5 garbage is what it's hauling. So, anyway.

6 CHAIRPERSON PAPARIAN: Okay. Any other comments
7 before we hear the testimony?

8 I have received a lot of written comments. I got
9 one this morning suggesting that -- it's from a national
10 C&D promoter, suggesting that if these regs are approved
11 as written, please do not ever refer to any IWMB as being
12 supportive of C&D recycling. I hope that's not the
13 direction we're taking here.

14 I think that if we look back at the history here,
15 we were in full agreement that anything over 100 tons
16 should receive a permit, and that permit would result in
17 similar regulation of a facility once it had the permit in
18 hand. It would receive the same number of inspections and
19 the same amount of scrutiny once they had the permit in
20 hand.

21 The question was whether at 100 tons to some
22 other level it should be a registration permit, and
23 whether at some level it should be a full permit.

24 And the net result of the permit in hand was the
25 same amount of regulation by the LEA's, same amount of

1 scrutiny, same amount of review on a regular basis.

2 And I think that the package that we have before
3 us, I think we should hear comments on the package before
4 us. But we should also keep in mind that the intent here
5 is not to shift the playing field that everybody's
6 operating on right now. But rather to have it stable
7 going out the door and give people plenty of time to get a
8 full permit.

9 And if some facilities don't qualify as C&D
10 facilities and are in fact some other type of facility,
11 they'll have to go along in a different direction because
12 they are indeed another type facility. But in terms of
13 the C&D facilities, I think that having several years
14 operating under a registration permit and then possibly
15 several more years if they're unable to get that full
16 permit in that time period for circumstances beyond their
17 control, hopefully will result in a situation that leads
18 the people who are in business to continue being in
19 business and hopefully thrive at what they're doing.

20 But, anyway, what we have before us is a revised
21 regulation proposal. We heard testimony on the old
22 regulation proposal last month. I think we all understood
23 that testimony fairly well. But we have a new approach
24 here, and hopefully that's what we'll be hearing comments
25 on today.

1 I have quite a few speaker slips. I'd probably
2 be overly optimistic if I thought we could get through all
3 these before lunch. So I suspect what we're going to do
4 is we'll hear as many as we can, take a lunch break,
5 probably hear the rest, and then decide what we do from
6 there.

7 Unless people are unbelievably short, which I
8 doubt would be the case.

9 We'll start with Gary Liss, representing
10 Industrial Carting in Santa Rosa.

11 And then, Gary, I have a second slip from Charlie
12 Hardin from Industrial Carting.

13 And, Charlie, I assume you'll also want to speak.

14 MR. LISS: Mr. Paparian, members of the
15 Committee. My name's Gary Liss, Gary Liss and Associates,
16 from Loomis, California. I'm here today representing
17 Industrial Carting of Santa Rosa, California; and also as
18 Secretary of the Independent Recyclers Council of the
19 California Resource Recovery Association.

20 I wanted to pass out the comments that were
21 submitted by the IRC about two weeks ago. If I can give
22 these to staff to distribute.

23 Industrial Carting on November 19th sent in a
24 letter from Lisa Hardin to Mr. Paparian, which I hope all
25 the Board members have received. I wanted to highlight

1 that.

2 Industrial Carting is here, one of the owners,
3 Charlie Hardin, is here today because they are the
4 quintessential small business entrepreneur that you're
5 negatively impacting. I wanted you to face them, and tell
6 Charlie why you are doing what you're doing. Because from
7 what everything I can see and everything that I hear, this
8 is being rushed through without a purpose, and a deadline
9 that is related to the real world.

10 In the real world, the C&D recycling operations
11 are expanding. Both in northern California and southern
12 California we see new C&D recycling facilities coming on
13 line.

14 The only major sham recycling that is happening
15 in the state is at the major solid waste facilities where
16 C&D is being used as ADC and intermediate cover and other
17 beneficial uses. The sham recycling that you should be
18 most concerned with is how your regulations today impact
19 the alternative daily cover issue further and further
20 exacerbate that very difficult policy issue that you've
21 been struggling with longer than you've been struggling
22 with the C&D regs.

23 So the crisis that you're trying to solve today
24 is in fact a smaller crisis than the ADC crisis that has
25 been out there and continues to be a major problem. And

1 all you are doing by the regs that are being proposed
2 today is falling into the trap of supporting more large
3 facilities at landfills using the material for C&D, ADC,
4 AIC, and beneficial use. That is the sham, not the sham
5 recyclers that I've heard of.

6 Industrial Carting is proposing a facility for
7 C&D recycling in Santa Rosa because they want to put their
8 private investment into meeting the concerns of the state
9 in achieving AB 939 diversion goals in Sonoma County.
10 Sonoma County's at 42 percent waste diversion. The county
11 has targeted C&D as one of the most important things for
12 them to address in their county.

13 And the only one that's come forward so far with
14 a new major investment is a small entrepreneur, Industrial
15 Carting, who's been serving in that area for a long time.
16 Their facility is proposed at 183 tons per day average
17 capacity, with a peak load capacity of 400 tons per day.
18 And that's why this issue is so important to them. They
19 need you to keep a previous staff recommendation of 100 to
20 500 tons per day registration tier. That is what is
21 needed, not the new phase-in compromise idea. We need the
22 registration tier as was originally proposed.

23 The only compromise that Industrial Carting can
24 live with that is -- would be acceptable for them is
25 lowering the 500 tier to 300 on an average basis as long

1 as the peak load were still allowed to go to the 500. So
2 suggesting a registration tier of 100 to 300 for average
3 loads, with peaking at 500.

4 But the whole idea of the registration permit is
5 so important to them because the costs involved. I've
6 heard tell that there aren't much negative implications
7 for the cost of having this phase-in tier. But from what
8 I've researched in the last week or two since I've heard
9 that, that's wrong.

10 And then I heard this morning that there's talk
11 of perhaps providing money to recyclers to help meet that
12 need to do the permitting work. And with a \$21 billion
13 deficit facing the state today and a structural problem in
14 the future, I don't see it in the cards that you can
15 guarantee today that that money will be there. And all a
16 sudden you'll have the regulations without the money.
17 And, lo and behold, it's the small guys that will get hurt
18 by that.

19 What is the problem? Why are you rushing to fix
20 it? If you don't meet the deadline by May, you just start
21 over again. What is the problem with that? Let's take
22 the time to do things right.

23 It's really about franchising. Yet you say your
24 Board policy is to be neutral about that, you have not
25 achieved that in what is proposed before the Committee

1 today. You'll be negatively impacting the entrepreneurs,
2 the recyclers that are out there.

3 We ask that you not do that, not go forward with
4 the phase permitting as recommended. If you do go with
5 the phase permitting, the one thing that I would
6 additionally add that were not in the original Independent
7 Recycler Council comments was don't have a sunset. You
8 know, if your purpose is to still stimulate more
9 independent recyclers to come forward and make private
10 investment to expand diversion in the state, and not just
11 have a consolidated by an oligopoly of the three or four
12 major large players, then why do you have to have a cutoff
13 time at any point in the future? Allow the registration
14 tier as phase-in to continue to be a available five years
15 from now. If a small entrepreneur has one facility and he
16 wants to build a second one, they should have the ability
17 to go through a registration tier phase-in process if
18 that's the way you go forward.

19 But we're not advocating that. We're not
20 advocating you have the phase-in at all. We're saying
21 that the original staff recommendation for the 100 to 500
22 tier for registration is the way to go. That is
23 critically important to Industrial Carting, critically
24 important to many other small entrepreneurs that have made
25 investments and want to make investments to address C&D

1 around the state. It's the right thing to do. Please
2 don't do the wrong thing for the wrong reasons.

3 Thank you.

4 I'd be happy to answer any questions or comments.

5 CHAIRPERSON PAPARIAN: Gary, the fundamental
6 question is how difficult it will really be to receive a
7 full permit.

8 MR. LISS: A couple hundred thousand dollars,
9 which for a small facility is not insignificant. We're
10 talking about not just the permitting activity. It's the
11 Environmental Impact Report, which, you know, as soon as
12 you start talking about that, you're looking at \$100,000
13 to \$200,000.

14 CHAIRPERSON PAPARIAN: If you need to do that.
15 We approved a facility this morning in Tehama County,
16 which by appearances from the permit before -- application
17 and related materials, it appears to me that they started
18 the process in the year 2001, and got a full permit today
19 for a 300-ton-per-day facility, with a Negative
20 Declaration, even though they're bringing 300 tons of a
21 lot nastier stuff than a C&D facility would bring through.
22 So I mean I'm not convinced that every facility's going to
23 need a full EIR.

24 MR. LISS: I'm not convinced of that either. But
25 Tehama is out in the rural area. It's not typical of the

1 C&D facilities that are needed in the urban area. C&D is
2 heavy. You want to have C&D facilities built where you
3 don't have to ship it long distances. You want to process
4 it locally.

5 We have -- our landfills are closing down. And
6 so what we want to have are a lot of small independent
7 recyclers and waste haulers building small facilities that
8 they don't have to spend all the air emissions and costs
9 of transporting, because 80 percent of the costs of any
10 solid waste operation is in the hauling costs.

11 So you don't want to have to haul these things
12 out to long regional hauls. You want them -- you want
13 small facilities scattered throughout the urban
14 infrastructure. To do that in the urban infrastructure is
15 more likely to arouse those who will protest needing a
16 full environmental review. And that's the problem that
17 you encountered.

18 Tehama is an example of a rural area where you
19 don't have those pressures for the environmental review.
20 And you've got a great operator as part of that, which
21 I've worked for before. It's not typical. And the
22 problem that you're setting a policy that will affect
23 everyone. And it's in the urban areas where there's the
24 most C&D activity going on, that you want to stimulate the
25 independent recyclers to build these facilities and the

1 waste haulers to build small facilities so that you're not
2 putting more truck miles on the road, you're not adding to
3 the pollution problem. The diesel fuel issue in L.A. is a
4 huge problem down there.

5 You need to allow and facilitate the private
6 investment and small facilities. But with the regulations
7 going in the direction you're suggesting, our best take of
8 it, it will lead to those large costs being required.

9 CHAIRPERSON PAPARIAN: The other question's still
10 on my mind on the EIR is that if a facility has
11 environmental impacts that trigger a need for an EIR, it's
12 not going to be our definition of where the tier is that
13 triggers the need for the EIR. You could have somebody at
14 80 tons a day and a notification tier; and if they're
15 causing an environmental impact, that could trigger EIR.
16 It's not the -- we don't dictate whether an EIR is going
17 to be needed by arbitrarily setting a tier level.

18 MR. LISS: Yes. But the --

19 CHAIRPERSON PAPARIAN: So in a registration
20 tier -- my point is in the registration tier you could
21 still need an EIR in a registration tier.

22 MR. LISS: But when you're applying for a new
23 facility in a local situation, if you're going for a local
24 conditional use permit or other local permits, they make a
25 decision based on the existing code. If you add on top of

1 that a solid waste facility permit requirement, all of a
2 sudden that whole phrase of "solid waste facility permit"
3 being regulated in the way that it's being proposed by the
4 Waste Board will give pause to locals to make additional
5 requirements is the likely scenario that we're speculating
6 will be out there.

7 In the case of Industrial Carting, we're looking
8 not to have to go through additional permitting
9 requirements that will take time and energy away from
10 their main chance of getting this C&D facility up and
11 running. The additional burden of doing just that,
12 whatever effort is required, takes away from the
13 day-to-day operations. Charlie, you know, was up early
14 this morning. You know, they're up everyday at dawn to
15 dusk working on their operations. They don't have a lot
16 of spare time to deal with another level of bureaucracy.

17 And the locals have done a good job in reviewing
18 the local land uses. What is the problem that is being
19 fixed here? What are you trying to fix? The locals are
20 regulating it. If there's any sham recycling by
21 independent recyclers, it will be at facilities that are
22 not locally regulated.

23 If you want to do something else, another idea
24 that Judith Ware proposed was allow a registration tier
25 for those facilities that have local permits.

1 The locals that are going through the local land
2 use permit process are doing the right thing, and the
3 LEA's have the opportunity to go in and inspect through a
4 registration tier. So there's no problem. Why create
5 one? Why cause a crisis when you don't have to?

6 CHAIRPERSON PAPARIAN: Mr. Jones, you had a
7 question?

8 COMMITTEE MEMBER JONES: Yeah. I think that
9 under a registration tier there's no requirement by this
10 Board to have CEQA documentation, whether it be a Neg Dec
11 or whatever. But under a full permit there is. And
12 what's important about that is -- you're arguments
13 basically that says, "Leave it a registration, raise the
14 level, because we don't want to go through CEQA review."
15 That's contradictory to arguments you've made in other
16 cases or other people have made, because it's the whole
17 idea of letting a jurisdiction understand what's going on
18 there.

19 Part of the problem we have with C&D, Gary, is
20 that if everybody really hauled C&D, there wouldn't a
21 whole need for this thing. That's not what happens. It's
22 very similar to our transfer station regs when we went
23 through how much residual is there at 10 percent. And the
24 fights that came from everybody that didn't want a 10
25 percent, they wanted it to be somewhere around 40 or 50

1 because they weren't just hauling recyclables.

2 And these are storage, handling, and disposal.

3 These are not just recycling. If Mr. Hardin wants to haul
4 source-separated boxes, he can do that all day long as a
5 recycling facility. I mean -- and one of the other
6 proposals he could have put a box at a place and taken
7 everything outside -- everything that had to do with C&D
8 and take it as source separated. And that was soundly
9 opposed by the C&D folks.

10 So, you know, I don't -- I understand Mr.
11 Hardin's issues. But to say, "Raise registration to 500
12 tons so we don't have to go through CEQA," doesn't protect
13 the public health and safety. It's those requirements --
14 and if you've got an ongoing facility that's operating and
15 not creating a nuisance and it's gone through its permit
16 process -- I mean its gone through its inspections and
17 it's got a clean bill of health, that's going to have
18 something to do with just how much the environmental work
19 is going to be done locally, because they could end up
20 circulating a Neg Dec as an ongoing operation. And it's
21 done quick.

22 So I think we've got to always keep in minds
23 there are facilities out there that don't want a full
24 permit because they don't want to tell their neighbors
25 what they're doing. La Montanya was one of them down

1 there.

2 MR. LISS: If you're saying that in the phase
3 registration tier there will be a finding by the Waste
4 Board that from your perspective there isn't a requirement
5 for an EIR, as you're indicating, that would be one thing.
6 But if that's not the case, then --

7 COMMITTEE MEMBER JONES: That's not what I'm
8 indicating, Gary. What I'm saying is in our established
9 permitting requirements there is a requirement that there
10 be a local finding for an EIR under a full permit. That
11 does not exist under a registration permit. Okay?

12 MR. LISS: Including the phase permit?

13 COMMITTEE MEMBER JONES: Whether it's a MSW
14 landfill or whatever, it doesn't exist, is that correct?

15 MR. DeBIE: In -- yes.

16 COMMITTEE MEMBER JONES: Okay. So -- thank you.

17 (Laughter.)

18 COMMITTEE MEMBER JONES: And based on that -- I'm
19 going to be done talking. But that -- you know, don't
20 misunderstand what I'm saying, because I didn't say what
21 you just said. I said that requirement is there in our
22 normal permitting system.

23 MR. LISS: Okay. The other issue is, are you
24 going to be concentrating the operations at large
25 facilities? And what is the sham recycling that we're

1 most concerned about? Are we most concerned about the
2 small amount of putrescible material coming from
3 construction sites that will end up as residue at some
4 landfill along the way as the residue from a C&D
5 processing facility? Or are we worried about contributing
6 to the consolidation of the industry that will lead to
7 more ADC disputes in the future because you're
8 consolidating -- the regulations are helping the large
9 guys and putting additional barriers for the small guys?
10 That is the sham, in my mind, and that's what the
11 Independent Recyclers Council's concerned about, that's
12 what Industrial Carting's concerned about.

13 We want to have the Waste Board helping C&D
14 recycling. We don't see how the regulations as being
15 proposed right now are helping C&D recycling, and they
16 could and very likely will hurt

17 CHAIRPERSON PAPARIAN: Mr. Hardin, would you like
18 to add anything?

19 MR. HARDIN: Yes. I'm with Industrial Carting,
20 and a family-owned business for 50 years.

21 CHAIRPERSON PAPARIAN: If you could just state
22 your name for the record too.

23 MR. HARDIN: Okay. My name is Charlie Hardin.

24 And I would really appreciate if you folks would
25 take into consideration what Gary just mentioned about the

1 tonnage. And we started the operation here, oh, about two
2 years ago in the permitting process. And the problem that
3 we see with this new tonnage, I guess you'd put it as a
4 limiting on the tonnage that we are allowed to take in per
5 day, would really affect the operation.

6 When we first got the permit from the county,
7 they allowed us 500 ton per day. And the way it looks
8 now, we're going to be scaled back to 100 ton per day, in
9 which we feel that that's going to be pretty detrimental
10 to our operation.

11 So what I'm asking and on behalf of the family
12 business, if you folks would take into consideration that
13 whatever regulations that are needed, I mean required,
14 we're willing to live up to anything that is placed on us
15 as far as regulations.

16 And another thing I would like to mention. We
17 are competing with some of the major companies right now.
18 And I believe that if we can't meet that mandate with the
19 400 to 500 ton a day, they could be detrimental to our
20 business.

21 And there's another issue here, getting back to
22 the tonnage. I didn't quite understand in the very
23 beginning why all of a sudden we got a change from a 500
24 ton a day dropping back down to 100 ton a day. I couldn't
25 understand why this was taking place. And if somebody

1 could please answer that question for me, I'd appreciate
2 it.

3 CHAIRPERSON PAPARIAN: Let me just give it a shot
4 here.

5 At under the old proposal, at 100 tons a day, you
6 would need a solid waste facilities permit call. The
7 registration permit is indeed a solid waste facilities
8 permit.

9 So under the old proposal at 100 tons a day you
10 would need a solid waste facility permit. Under the old
11 proposal you would have gotten a -- you would have
12 approached your local enforcement agency and they would
13 have issued you a piece of paper, a registration permit,
14 which would indeed be a solid waste facility permit.

15 When you went over 500 tons a day, you would need
16 to go instantly to another step, which would be a full
17 permit, which would mean some additional time. But at the
18 same time you could have items put in that full permit
19 that related specifically to your site-specific
20 conditions. Under the registration permit, it would be a
21 one-size-fits-all. We would have a consistent permit
22 through the state, right? Registration permit would look
23 the same anywhere in the state. Whereas a full permit
24 could have differences depending on the site.

25 That was the proposal up till last month.

1 What we changed was that you would still be able
2 to get the registration permit at 100 tons, but you would
3 need to pursue getting a full permit. And you'll have
4 three years to do that. And under one proposal you could
5 even get an extension of a couple years if you're making
6 progress. But you get hung up in City Hall or wherever on
7 getting that full permit.

8 So either way -- under the old system you would
9 need a solid waste facility permit. Under the new system
10 you would need a solid waste facility permit. Under the
11 old proposal you'd keep that registration permit between
12 100 and 500 tons. Under the new system you'd have up to
13 several years to convert that registration permit into a
14 full permit.

15 MR. HARDIN: Thank you.

16 CHAIRPERSON PAPARIAN: I hope that provides a
17 little bit of clarity.

18 MR. HARDIN: Yeah, that cleared it very well.

19 So I guess at this point in time what we're
20 looking at is a decision to be made today?

21 CHAIRPERSON PAPARIAN: We'll see after we hear
22 all the testimony. If we make a decision, we still
23 have -- there's quite an elaborate process we go through
24 to adopt regulations. The upshot of all that would be
25 that at the earliest the regulations would take effect in

1 spring sometime -- spring of next year. Our action today
2 won't be to instantly put into place the regulations.
3 There's some additional steps that need to take place
4 before they actually are enacted.

5 MR. HARDIN: Okay. Thank you very much. And,
6 again, I would appreciate if you would consider what Gary
7 just mentioned here. I'd really appreciate it.

8 Thank you.

9 CHAIRPERSON PAPARIAN: Okay. And thank you for
10 taking so much time away from your business and coming all
11 the way over here. I appreciate how difficult and
12 challenging it is to get over here and participate in a
13 hearing like this.

14 MR. HARDIN: You're very welcome.

15 CHAIRPERSON PAPARIAN: Next, Sean Edgar.

16 Is Sean in the room?

17 MR. SEAN EDGAR: Good morning, Mr. Chairman and
18 Committee members. Sean Edgar on behalf of the California
19 Refuse Removal Council, 100 companies operating C&D
20 programs throughout the state.

21 A Lot of private investment in those facilities,
22 and over 50 fully permitted material recovery facilities.
23 Some operations on top of landfills, both rural and urban.

24 CRRC, we do C&D and we also do CEQA. We can do
25 both at the same time.

1 As a matter of fact we have a few Charlies in our
2 group. Unfortunately they weren't able to join us today.
3 We have Charlie Youngclaus from Madera Disposal providing
4 his services in that local community for more than 40, 50
5 years. We also have the late Charlie Catanyo from San
6 Luis Garbage Company.

7 The short answer is that in the development of
8 programs over the years, our Charlies have figured out how
9 to both operate recovery programs as well as and achieve
10 appropriate level of regulation for those facilities.

11 I briefly wanted to address just a few key
12 issues.

13 And on issue number 1, pertaining to this waste
14 versus debris definition, we agree that there is no clear
15 line. I think we heard staff discussing that the C&D
16 wasters can have up to 99 percent residual, the C&D debris
17 folks can have up to 99 percent residual. I'm failing to
18 see what clear distinction there is between those two
19 groups of folks.

20 What we do strongly disagree with, and I think
21 Mr. Jones touched on that point, is that the folks who
22 have consistently argued that this is very clean material,
23 apparently have a desire to handle food wastes as part of
24 this. And our prior discussions and -- you know, food
25 waste is definitely a part of municipal solid waste and

1 it's regulated under transfer processing regulations.
2 Since rate last year CRRC has advocated that mixed C&D and
3 materials containing any amount of food waste should be
4 regulated appropriately under the transfer processing
5 regulatory requirements. And if staff's suggestion that
6 mixed C&D would be placed directly into the transfer
7 processing regulatory tiers, I believe CRRC would be
8 supportive of that provided there is not an unnecessary
9 amnesty program that goes along for three years, six
10 years, five years or ten years as came out in the
11 workshops for people to decide they'd choose to get a
12 permit at some stage down the road.

13 So we strongly oppose the removal of food waste
14 from the list of items that are included in the debris
15 definition,

16 Secondly, on the issue of franchise neutrality,
17 CRRC is satisfied that the staff addressed our concerns
18 about franchise neutrality. So we support that language
19 moving forward.

20 Regarding the phase-in period, we respectfully
21 submit and in accordance with our prior testimony that two
22 years is sufficient time in order to achieve an
23 appropriate level of a full solid waste facilities permit.
24 As we indicated, much of that -- in our past testimony,
25 much of that two-year period is estimated in a use permit

1 or CEQA process that should be done already. I hear a lot
2 of mea culpa and hand ringing that somehow we don't know
3 whether we would be able, because we call it one thing or
4 another -- I'm assuming that these folks know their waste
5 stream. They know the traffic coming into their
6 facilities. They know the local community that they
7 serve. There I don't believe is any legitimate reason why
8 they would not be able to achieve a level of environmental
9 review simply because we call the material one thing or
10 another. If they're an existing operation, they know what
11 they're handling, they should be able comply with CEQA.
12 Our Charlies can do it, other Charlies can do it as well.

13 With regard to the length of the phase-in period
14 and the extensions at the end, we would submit that the
15 existing Public Resources Code has provisions that solid
16 waste handling operations that operate without a permit
17 receive a cease and desist. So we would argue, first of
18 all, for the phase-in period should be 24 months; second
19 of all, that at the end of that 24 months that the time is
20 up, and if becomes time for the LEA to issue a cease and
21 desist order as required by PRC Section 44002(a).

22 Finally, with regard to issues that did not --
23 were not fully flushed out in the workshops, CRRC
24 maintains our position that a 10-percent cap on residual
25 is adequate for C&D debris and inert debris processing

1 facilities. That logic flows somewhat naturally from Mr.
2 Liss's discussion about we're the real recyclers. I can
3 assure Mr. Liss the CRRC are recyclers as well. And we do
4 achieve recovery in these programs. We do believe that,
5 as currently written with this no cap on residual, that we
6 can guarantee no recovery if we have no cap on residual.
7 So I believe, as Mr. Jones pointed out, that these
8 facilities can push up to 99 percent garbage through the
9 facility without any cap on residual. We don't believe a)
10 that that's protective of public health, safety,
11 environment. Number 2, we don't believe that there's any
12 level of recovery that can meet the mission of this Board
13 to comply with Senate Bill 1374 (Kuehl), which requires a
14 range of diversion rates and local ordinances.

15 That having been said, I would appreciate your
16 consideration of our comments to maintain a 24-month
17 window. And would be happy to address any questions that
18 you might have.

19 CHAIRPERSON PAPARIAN: Any questions?

20 No.

21 Thank you very much.

22 Mike Hammer from Looney Bins.

23 MR. HAMMER: Mike Hammer speaking of behalf of
24 Looney Bins and also the future small processors that will
25 come along in the next few years. Really would like to

1 urge the Committee today to consider the impact that these
2 regulations are going to have on future small processors
3 that want to enter the recycling market. They're
4 certainly is a balancing that needs to take place between
5 the promotion of recycling and the protection of public
6 health and safety.

7 But we do feel that even within a registration
8 permit that the state minimum standards monthly LEA
9 inspections provide adequate public health and safety
10 protection within the registration permit.

11 You know, I really feel that the current draft of
12 pendulum has swung too far toward, well, we're hyper about
13 protecting public health and safety. We saw pictures of
14 big tons of material laying on the lot, and we just made
15 the assumption now that it's dirty, that there's health
16 problems. And, you know, Mr. Jones brought up that, hay,
17 there's people that call themselves C&D processors that
18 really aren't. But within the definition they wouldn't
19 get the benefits of the registration permit because the
20 material they are processing doesn't qualify.

21 And I really want to urge the Committee to swing
22 the pendulum back toward promotion of recycling in
23 California. If it takes a few more months to do that and
24 to get it right, let's take the time rather than rush into
25 something that comes up with a poor system.

1 You know, we've got to look at the fact that last
2 year was the first year in over a decade that the state's
3 diversion rate didn't increase. It stayed at 42 percent.
4 First time in over a decade that there's been no increase.

5 Secondly, by your own waste stream analysis in
6 the year 1999, there's about 4 1/2 million tons of C&D
7 disposed. Within that category you didn't include metal,
8 that's very common in C&D loads. So by today there's
9 approximately 6 million tons of C&D that's being disposed
10 in landfills right now in the State of California.

11 You got to look at the fact that what -- you
12 know, if you want to look at an ugly picture, why don't
13 you pile up 6 million tons of C&D and then pile up a big
14 hole in the ground that that's going into right now, as
15 far as what we need to be concerned about in the State of
16 California.

17 It would take 200 new processors at 100 tons a
18 day to handle 6 million tons a year.

19 Now, I don't know if there's any figures of how
20 many processors we have right now that are legitimate.
21 The staff visited a couple dozen, it sounds like. But if
22 we want to divert 6 million tons, that's 200 new
23 processors at 100 tons a day, 60 at 300, and 40 at 500.

24 And we've got to look -- we've got to encourage
25 future processors to come if we're going to handle that

1 amount of material. We got visited in L.A. by the city of
2 L.A. to do a survey of our capacity. And they said
3 they're surveying all the local areas because they want to
4 pass a C&D ordinance. But they're afraid that there's not
5 enough processors to handle the tonnage that would be
6 required by the ordinance if they were to pass it.

7 And we've got a promote recycling, not discourage
8 it.

9 You know, on top of that the financial impact --
10 let's put some hard numbers -- you know, we talk about,
11 well, it's going to be burdensome. At 100 tons a day, if
12 you operate six days a week, it's right around 30,000 tons
13 of C&D debris per year. In our area let's just say the
14 tipping fee's 35 bucks a ton, and you operate at a margin
15 which for 100 tons a day is probably a really small margin
16 like, say, 5 percent. That's a dollar seventy-five per
17 ton that you make around \$50,000 profit a year from your
18 whole operation at 100 tons a day.

19 Let's take conservative estimates on the
20 financial burdens of taking the step to go from 100 tons
21 to, say, 105 tons a day, which is possible CEQA analysis,
22 whether it's a Negative Declaration, whatever, let's just
23 say 50,000. We're talking about asking a company to spend
24 all of their profit to handle 10 more tons just to go
25 through an environmental process, which I'm supportive of,

1 but I think it's too big of a burden when the state has
2 identified that it poses -- for true C&D debris as it's
3 defined in the regulations that poses a lesser health
4 risk.

5 And it's not that we're afraid, "Oh, we don't
6 want our neighbors to see." I mean our neighbors can see
7 what we do. We invite them in. Anyone who wants to come
8 and see can see it. It's not that we're afraid of that.
9 But we just feel imposing that burden on 100 ton per day
10 operator is too high. You're not going to get future
11 processors to make the jump to go from 100 to 200 to 300.
12 If you're already at 300 tons a day, then the financial
13 costs are more in line with the profits that you're
14 making.

15 But, again, going back to the fact that 6 million
16 tons of C&D are being disposed, not generated but -- I
17 mean in addition are being disposed into landfills, we've
18 got to increase the number of processors in the State of
19 California.

20 You know, Looney Bins' current operation, under
21 the phase-in period, given three or four years, we can
22 spread those costs over several years so we can make it.
23 But I'm really speaking on behalf of the future small
24 processors that want to start at 50 and go to 200, that
25 they're not going to be able to make that burden. You're

1 giving us a phase-in period, or that's what you're
2 proposing. Why? Because you recognize that having it
3 right away when you're that small, you just can't do it.

4 And, again, we're supportive of the state's
5 efforts to run clean operations, to have them be safe.
6 But I really believe that an LEA visiting a site under
7 registration permit once a month to see whether you're
8 doing a sham operation or whether you're doing a clean
9 operation, to look at the putrescible limits, to look at
10 where the loads are coming from and making sure that they
11 really are C&D debris, is sufficient to protect both
12 concerns of public health and safety, but also to
13 encourage the future of recycling in the State of
14 California.

15 We can't have burdens that aren't warranted if
16 we're going to achieve the state's rate of 50 percent
17 diversion. C&D is generally a clean material that can be
18 processed, and most of it recycled or reused. And if we
19 put that burden in, it's really going to stifle the
20 state's ability to increase its diversion rate from 42
21 percent up to the 50 percent.

22 You know, again, I really want to urge you not to
23 just think about those that are in operation right now,
24 but the class of processors that we're going to need to
25 have within the State of California to really take a bite

1 out of the that 6 million tons of C&D debris and really
2 get over the 50 percent mark in the state.

3 So thank you very much.

4 CHAIRPERSON PAPARIAN: Thank you.

5 Any questions?

6 No.

7 Okay. Kelly Aster.

8 And then we'll talk about what we're going to do
9 about our lunch break after Mr. Aster.

10 MR. ASTER: Thank you, Mr. Chairman and members
11 of the Committee.

12 Along with Sean and Evan Edgar I too represent --
13 I represent the California Refuse Removal Council.

14 Occasionally after hearing people like your first
15 witness I have to remind all of us that CRRC is one of the
16 biggest recyclers, our members, in the state; and the idea
17 that recycling is something different from what our
18 members do I think needs to be constantly clarified. So
19 I'd like to take this opportunity to do that.

20 And as I testified the last time on this
21 regulatory package, there's nobody that's got a larger
22 incentive to secure additional recycling attainment than
23 the waste industry, which is frequently franchised and,
24 therefore, contractually bound to deliver diversion
25 results. Many of us have a philosophical idea that we

1 support recycling anyway. But this goes much beyond that.
2 So you wouldn't hear the waste industry or the bulk of the
3 waste industry anyway expressing the concerns that we
4 persistently have if we felt that recycling was going to
5 be harmed.

6 And the idea, if you can simply count more
7 recyclers, you get more recycling, nobody's proven that.
8 That's just an opinion that gets tossed around recklessly,
9 and pretty soon it's adopted as truth. I submit that the
10 CRRC members and the national companies, all your big bad
11 people out there, we're the ones doing the bulk of the
12 recycling.

13 Now, how we got there is a different discussion.
14 But the idea that we're not recyclers or not in support of
15 recycling is simply wrong. And I think it's misleading to
16 suggest that.

17 We have a couple of lingering concerns with
18 regard to this reg package. We were pleased with staff's
19 effort in response to Board direction to clarify that
20 waste and debris are essentially synonymous or that debris
21 is a subset of waste.

22 I will confess to a certain amount of confusion
23 still though that we even use the term "debris" anymore in
24 these regs, once we've conceded and acknowledged that it
25 is what it is, a class of solid waste. It seems like

1 there's still a little of a parallel track in the regs
2 that has me a little bit concerned.

3 But my larger concerns are some of those that we
4 expressed earlier and that have yet to be addressed.

5 There's also a new one. The new one is that food
6 waste has now fallen out. That was part of that zero
7 tolerance notion that Mr. Jones had advanced several
8 months ago.

9 We don't like that. How staff or this Board
10 could -- or anyone could buy into the argument that "I'm
11 just a C&D hauler, but I want to haul food waste too,"
12 that doesn't fly. That offends logic. So we'd be very
13 interested in securing additional revisions to this reg
14 package which restores the food waste exclusion, so they
15 don't run into a problem of whether food waste is
16 construction and demolition debris or waste or not. It's
17 not.

18 The biggest problem I have with these regs
19 still -- or my organization does is that the residual part
20 test is not there. And staff told us at our meeting last
21 week that, "Well, we're constrained to really respond to
22 just the immediate direction we've been given." And
23 hadn't felt they'd received enough direction, or direction
24 at all, from you to allow us to talk about that.

25 But I will repeat what I said last time. A

1 facility processing material that has no back-end
2 diversion requirement is a transfer station, because you
3 don't know that it's going to recycle anything unless it's
4 compelled to do that. And you can't cite them for failing
5 to recycle.

6 So they've set up under the guise of promoting
7 additional recycling, and there's nothing requiring them
8 to recycle an ounce of material. That doesn't make sense.

9 We respectfully submit that a 10 percent residual
10 threshold ought to be applied. It makes sense. It
11 ensures that these recycling goals that all of us are so
12 concerned about actually get met and achieved and maybe
13 even exceeded.

14 With regard to the phase-in period. My
15 understanding of reading the code is to secure a Waste
16 Board full permit by itself is on the order of 150 days.
17 We felt that a year was going to be enough. But we were
18 kind of talked into after meeting with others, you know,
19 two years, let's give them a little time. Now it's three.
20 And three is being discussed as though it's a foregone
21 conclusion, when we felt two was generous.

22 If someone hasn't gotten around at this point in
23 time to getting the local land use part done, I don't
24 think the reward should be, as one witness suggested, they
25 get a rolling three years to accomplish that. I think it

1 ought to be finite. I think in spite of the fact that
2 circumstances beyond their control may delay them, there
3 ought to be a cut off. And it ought to be two years. And
4 that's still several times the mere 150 days it takes to
5 secure one of these permits from you folks.

6 I don't where three years or five years or
7 anything of that comes from. I get back to the fact that
8 our people went out and did it.

9 And, by the way, I've got plenty of small
10 operators, much like Mr. Hardin, who were told on advise
11 by me and others that if you want to get into this, here's
12 what you have to do. And they found a way to do that.

13 It' seems to me that the burden -- in discussions
14 about how liberal these regs ought to be, how much
15 allowance they ought to make for all these different
16 options, the burden ought to be on those who want to avoid
17 regulation to sustain their right to do so.

18 I'm up here ironically arguing for compliance,
19 because my people were able to achieve that. And those
20 that haven't -- and there are some CRRC members, probably,
21 who are operating facilities who haven't gotten a Waste
22 Board permit yet, they ought to get one or they ought to
23 be grandparents -- grandfathers during this amnesty
24 period.

25 But there should be nothing about extensions in

1 there. You ought to have a very realistic term which
2 allows everybody who's now operating in. Those that are
3 thinking about operating or wondering about it, scratching
4 their backside, dreaming about it, I don't think your
5 obligation is to take care of them in the name of
6 additional recycling.

7 We've got three kinds of operators right now:
8 Legal, illegal, and those that are just thinking about it.

9 The legal people are already taken care of.

10 Those that aren't quite legal, if they've gone
11 through sufficient number of steps to secure and satisfy
12 the local land use requirements, maybe they become
13 grandfathers and grandmothers during the amnesty period.
14 But cut them off.

15 And if they haven't gotten a permit in time,
16 guess what? They don't shut down necessarily. They're
17 not out of business.

18 This has never been a discussion about whether
19 someone gets to be in the recycling business or not. It's
20 a discussion, if properly viewed, about what regulatory
21 requirements they need fulfilled.

22 There aren't exclusive franchising relationships
23 for processing. Some exclusive franchisees in the
24 collection side have arrangements with the facilities.
25 But the point is, anybody in any town, if they can make

1 the local land use case, if there isn't kind of negative
2 or adverse environmental impact that Mr. Paparian's talked
3 about, they can go set up shop tomorrow so long as they
4 get a permit.

5 So please don't buy into the argument that "If
6 you require a permit, I mean I can't get into this
7 business or I'll be put out of business." You'll simply
8 go through the process that so many others have.

9 I took notes this time. So I'm going to check
10 them, see if I missed anything.

11 CHAIRPERSON PAPARIAN: You included quite a bit.

12 MR. ASTER: I think I covered it all.

13 Thank you very much.

14 CHAIRPERSON PAPARIAN: Okay. Thank you.

15 The next person I have on my list is Patrick
16 Munoz.

17 My members, are you up for hearing maybe one more
18 before lunch, then taking a break?

19 COMMITTEE MEMBER CANNELLA: Fine.

20 CHAIRPERSON PAPARIAN: All right.

21 Okay. We'll hear from Mr. Munoz, and then we'll
22 take our lunch break.

23 MR. MUNOZ: I'd like to think you didn't call me
24 now because you couldn't stand the thought of listening to
25 me after you ate.

1 (Laughter.)

2 CHAIRPERSON PAPARIAN: We were so anxious to hear
3 your comments and being able to ponder them.

4 MR. MUNOZ: Well, thank you again for the
5 opportunity to address the Board here.

6 Let me first start by addressing my specific
7 comments to the set of regulations that are in front of
8 you. Regardless of whether we agree with them or disagree
9 with them, I want to at least take the time to comment on
10 the draft that the staff has taken a lot of time to put
11 together.

12 And then I've got some other comments that are in
13 the broader sort of policy arena, which is I think more in
14 line with most of the comments you've heard this morning.

15 With respect to the definition issue and to the
16 issue of trying to keep the regulations neutral in the
17 marketplace, I think your staff has done a tremendous job
18 and I want to thank them for working with us and taking
19 your direction to do that.

20 There's one area that I think would make it
21 better. The question that I raised at the last hearing
22 was whether or not blueprints and old permits and that
23 sort of waste from an office trailer would fit this
24 definition of C&D debris or not. I've had completely
25 opposite responses to that question, depending on which

1 member of your staff I've asked. I think it's just
2 ambiguous the way it's written right now.

3 I think that there's a big impact on neutrality.
4 If that's not included, I'd like to see it included. I'd
5 like to ask that a one-word change be made, which I think
6 would then clarify that that kind of waste would be
7 included. And that would be to add the word "supplies" to
8 section 17381(e) (1) (B) .

9 So that section would read, "Tools, supplies, and
10 building materials consumed in the course of
11 construction," et cetera.

12 CHAIRPERSON PAPARIAN: Could you slow down just a
13 second. I want to catch up to where you're at. You said
14 section 17381?

15 MR. MUNOZ: 17381 small e, 1, large B.

16 CHAIRPERSON PAPARIAN. Okay. And then your
17 suggestion again?

18 MR. MUNOZ: To add the word "supplies" after the
19 word "tools." I'm not wedded to that word.

20 Mr. de Bie indicated in the workshop a week or so
21 ago that he felt as though building materials would
22 include things like a blueprint that was thrown away from
23 an office trailer. Mr. Bledsoe indicated to me that he
24 did not think that was the case. And, you know, I just
25 want to make sure that that part of this waste stream is

1 not excluded.

2 In the industry the way things work is that
3 somebody puts out a three yarder typically at a
4 construction trailer and then puts it off the roll-offs
5 around the site. And a lot of packing materials and other
6 normal what you would consider typical construction waste
7 is put into those three-yard bins. But those bins also
8 tend to get the most of things like, you know, blueprints.
9 If the blueprints were thrown on the ground on the site
10 and as part of the cleanup were picked up, I think it'd be
11 real clear that they were part of the construction waste
12 stream. But if they're specifically being put into a
13 segregated three-yard bin, then it becomes unclear. It
14 creates advantages to the companies going out trying to
15 get the hauling work if it's not included. So that's my
16 suggestion on that issue.

17 A related issue is food waste. Food waste is a
18 big issue. The way the regulations are already drafted
19 there's this concept of one-percent putrescible. We've
20 been talking about this for well over a year now. Every
21 construction site, every roll-off is going to have -- and
22 maybe not every single one -- but 99.9 percent of them is
23 going to have some food waste in it. That's what
24 putrescible material is.

25 If somebody rolls up a McDonald's hamburger

1 wrapper and it's got some ketchup on it and they throw it
2 in that bin that's full of nothing else but rock, all of a
3 sudden you've got, you know, a thumbnail's worth of food
4 waste, and all of a sudden it's prohibited. All of a
5 sudden it can't go in one of these facilities.

6 You are effectively saying that -- if there's an
7 absolute zero tolerance on food waste going into a C&D
8 facility, you are effectively saying that everybody may as
9 well just go ahead and get a transfer processing permit.

10 We're not suggesting that we want to go out and
11 pick up household garbage or restaurant garbage. But I
12 think you have to take into consideration the reality that
13 there is some food waste included in these bins. The way
14 the definition is written, you're staff added in several
15 versions ago the language that the one-percent putrescible
16 cannot raise the level of a public nuisance. As a result
17 the EA has some flexibility and some discretion to say,
18 "Hey, you know, your facility's getting 2,000 tons a day."
19 We're not talking about 20 tons -- I'm sorry, a month,
20 whatever the number was that we'll use as an example for.
21 We're not talking about 20 tons of food waste necessarily.
22 If 5 tons is a public nuisance, then we're talking about
23 less than 5 tons potentially. There's some flexibility
24 there for the EA to address that issue.

25 And let me jump ahead for a second to one of my

1 kind of big broad policy concerns. There's a lot of
2 comments in terms of, you know, are haulers legal or not
3 legal right now -- or not hauler, I'm sorry -- are
4 processors legal or not legal? We don't know, because the
5 definition keeps changing, the rules keep changing. My
6 client spent \$5 million building a facility. We have a
7 letter from the EA that says we don't have to have any
8 sort of a permit from this Board. Believe me, before you
9 spend that kind of money and you finish the job, when you
10 go through the permitting process, which we did, you would
11 have -- we would have come to and asked for the permit,
12 but there was nothing for us to ask for.

13 The rules have changed several times back and
14 forth over the last year. Today, over the last month, all
15 of sudden this facility that we spent all this money,
16 that's now up and operating, that's diverting 90 percent,
17 is a transfer station because I will tell you right now
18 there are some hamburger wrappers in there with a little
19 bit of ketchup on them.

20 A month ago though it wouldn't have been a
21 transfer station because you could have some food waste,
22 as long as it was not the food waste from the people in
23 the office building that were on the floor that wasn't
24 being remodeled, or some convoluted explanation that I
25 never quite understood.

1 So the rules keep changing is part of the problem
2 that we're dealing with here.

3 And it's important for you as a board to
4 recognize that the reason you keep seeing me, the reason
5 we're up here constantly is because we have a very
6 significant financial interest involved.

7 We're an existing business that we were told,
8 point blank, didn't need to come up to you and get a
9 permit. So we were approved, we spent our money, and now
10 we're operating.

11 We're not opposed to you putting reasonable
12 regulations on us. I've said that before. I maintain
13 that's our position. But we don't want you to regulate us
14 in a way that we can't operate. And there are -- you
15 know, are different things that we can do to be sure we
16 can operate, which ultimately we will do.

17 But we want to operate as a C&D facility. So we
18 would like you to draft these in a way that we can do
19 that. It's as simple as that.

20 And every person that kind of comes up from our
21 side of the isle has a similar financial interest.
22 They're existing, they're operating. They want to be able
23 to keep doing what it is they're doing right now.

24 And I wouldn't go so far as to say that you're
25 rushing into anything with these C&D regulations. This

1 has been a long, drawn-out process. However, the
2 regulations that are before you right now are very
3 different, they're very new. To try and consider the
4 compromise solution that Mr. Paparian suggested at the
5 last meeting -- which I appreciate, I think it was a good
6 idea, it was a good effort to try and get the parties to
7 come together and try some neutral common ground. But to
8 try and to digest in 15 days this whole new set of
9 regulations, to try and make something meaningful out of
10 that I think is rushing. There's a lot of new ideas that
11 were thrown out by your staff today. I could suggest four
12 or five other ideas on a better way to -- or, you know,
13 alternative ways to regulate this waste stream.

14 If we're going to go down all kinds of new roads,
15 perhaps we should step back and look at the process and
16 rethink what the best policy direction is, and not rush
17 into major changes in the last 60 days of what's been a
18 well in excess of two-year-long period.

19 I digress. Getting back to the regulations in
20 front of you.

21 With respect to the compromise language, the
22 phasing out of the registration tier. Just for the sake
23 of having commented on the language in the event that it
24 is adopted, I think it would be very important to add in
25 some language to allow the EA's to have some discretion if

1 there are unforeseen delays.

2 For instance, if a local neighborhood group were
3 to challenge any sort of an environmental finding, the
4 CEQA findings, you're looking at a several-year-long
5 process to go through the litigation process. I think
6 that's something you need to take into account. Those are
7 the kinds of examples I think that staff was alluding to
8 to allow some flexibility.

9 I'm not entirely sure if I understand the
10 regulations as they're written right now in terms of this
11 compromise language. I was gone over Thanksgiving and
12 didn't read them till yesterday.

13 I think it's important though to not shorten the
14 timeframe. I think it's important to bear in mind that,
15 especially with things like, you know, the so called Kuehl
16 bill floating around out there, you need to make sure that
17 we have the opportunity to expand recycling opportunities.
18 Regardless of how it applies to future businesses, at a
19 minimum I think you need to look at the existing
20 businesses, the businesses that are already out and are
21 already recycling this part of the waste stream. And make
22 sure you don't do anything that will contract that part of
23 the marketplace, so that local agencies do have the
24 ability to comply with the newest legislation out there
25 requiring more and more of this material be recycled.

1 And, you know, with respect to Mr. Aster's
2 comments on the CRRC, that they're recyclers. You know,
3 nobody disputes that there's a lot of recyclers out there
4 already. But I don't think there would be a marketplace
5 for clients like mine to get into this business if they
6 were doing a better job than the recycling that they're
7 doing right now. Look at all of the extension permits you
8 have under AB 939. All these applications are coming in.
9 Why? Because people aren't at 50 percent.

10 There's a whole new breed of recyclers out there
11 that are looking at that and saying, "Okay. Here's a
12 niche in the marketplace where we can help those cities
13 get there, or we can increase the amount of recycling
14 that's occurring." The CRRC is simply not recycling
15 enough. And we want to jump into that marketplace. We've
16 done that already. We want to increase the amount of
17 recycling that's going on. So I would just implore that
18 you don't do anything that's going to scale back those
19 opportunities.

20 And as I've already said, I think that if you're
21 going to consider brand new ideas like treating everybody
22 like a MRF, I mean we've got all kinds of other ideas we
23 could discuss with, such as -- somebody already alluded to
24 this concept, we were talking about in the hall earlier
25 Tuesday. If somebody had already gone through a land use

1 approval, through, you know, a local agency approval and
2 exhaustive approval, that sort of thing, why not have a
3 registration tier for those folks. If you're concerned
4 about local control, there's all kinds of ways to ensure
5 you have both local control and control by the LEA.

6 And, again, I think that perhaps stepping back
7 and looking at all the options -- if we're going to go in
8 these drastic ways away from where we were two months ago,
9 maybe the best thing to do is just step back and look at
10 it.

11 The bottom line at least within the framework
12 that we've been looking at over the last year, my clients'
13 preference would be to go back to the tiered permitting
14 system, make it meaningful to have a registration tier.
15 We thought 500 tons was a compromise. 750 tons was
16 something that your staff could recommend. You heard Mr.
17 de Bie today say that he could still recommend 500 tons.

18 If we want to stick within the framework that
19 we've had a chance to meaningfully comment over the last
20 year or so, that would be our desire, with due respect to
21 Mr. Paparian's idea that's now in front of us. And we do
22 appreciate that. It's not meant to be critical. I'm just
23 not sure that it solves the issues that we've heard many,
24 many times are the concern.

25 Thank you.

1 CHAIRPERSON PAPARIAN: Thank you.

2 Members, any preference on how long we take for
3 lunch, recognize we still have quite a few witnesses left
4 to go through?

5 COMMITTEE MEMBER CANNELLA: Tomorrow too late?

6 (Laughter.)

7 CHAIRPERSON PAPARIAN: Next.

8 COMMITTEE MEMBER JONES: We have a 3 clock
9 Special Waste meeting. So we've got to get through this
10 and start at 3 o'clock with special waste.

11 CHAIRPERSON PAPARIAN: An hour?

12 COMMITTEE MEMBER CANNELLA: That's plenty.

13 COMMITTEE MEMBER JONES: That's good.

14 CHAIRPERSON PAPARIAN: Okay. Well, I'll say
15 1:15, recognizing we're off at a few minutes late, and
16 actually getting the gavel down. How's that?

17 All right. So we'll take a lunch break, be back
18 1:15 to maybe 5 or 10 minutes late.

19 (Thereupon a lunch break was taken.)

20 CHAIRPERSON PAPARIAN: Okay. We're going to go
21 ahead and start. Mr. Cannella might be delayed a few
22 minutes getting back from lunch.

23 Start with the ex partes.

24 Mr. Jones.

25 COMMITTEE MEMBER JONES: What, did he leave the

1 room?

2 Oh, my first ex parte is Mark Murray from
3 Californians Against Waste. But I had discussions with
4 Judy Ware and Mr. Munoz. And my friend from Fresno --
5 Kroeker. And I think I said hi to Gary Liss. And an old
6 acquaintance of mine, Charlie Hardin, who I recalled
7 delivering a truck to him at our yard back in the
8 eighties.

9 So that just about covers everybody.

10 CHAIRPERSON PAPARIAN: Mr. Medina.

11 COMMITTEE MEMBER MEDINA: None to report.

12 CHAIRPERSON PAPARIAN: And I also spoke with Mark
13 Murray about the C&D regs.

14 And we'll start with people who aren't in the
15 room.

16 (Laughter.)

17 COMMITTEE MEMBER JONES: I second that.

18 CHAIRPERSON PAPARIAN: Actually you can all
19 affirm that Curt Fujii I'll put to the end of the line.

20 And then Don Gambelin.

21 Kelly I thought I saw. Yeah.

22 Kelly Ingalls.

23 MR. INGALLS: I'm Kelly Ingalls. I'm the
24 Regional Director of the Construction Materials Recycling
25 Association of Southern California.

1 I think of the tiered regs in the years that I've
2 been involved. And there's sort of a public policy issue
3 on one level. And public policy being that these tiered
4 regs are supposed to do something about construction and
5 demolition recycling. And we all know the purpose, and
6 I've mentioned that purpose before. But putting it in
7 perspective of Assembly Bill 939 first of all requires
8 50-percent diversion of waste from landfills. We all know
9 that. That is one issue.

10 And if the locality's not able to do that, the
11 Board has the opportunity to notice that locality comply.

12 In one locality, the city of Hawthorne, that I
13 worked with before, that locality was required to comply
14 by having a construction and demolition waste recycling
15 program.

16 Dozens of localities throughout the state have
17 adopted C&D recycling ordinances. And you can even go the
18 Integrated Waste Management Board's website to look at
19 those ordinances, those draft ordinances to design one.
20 And other localities are getting ready to. So as a public
21 policy, C&D recycling is a way of achieving the goals of
22 Assembly Bill 939.

23 So I have a little bit of difficulty with the
24 current state of the regs because they seem to be going in
25 the other direction, of not recycling. And I'll discuss

1 why.

2 I believe that the purpose of the tiered regs --
3 and I always thought that since 1998 -- was to provide a
4 blueprint for a good construction and demolition recycling
5 operation.

6 And if there are bad operators out there that
7 have garbage at their site or they have employee lunches
8 at their site, all you have to do is come up with some
9 rules and say, "You can't do that." And what's to say that
10 a business can't comply, they won't comply. If there are
11 bad players out there, I'd like to see the list. And I
12 brought this up before. I asked for a list of the poorly
13 operated facilities throughout the State of California.
14 And, Mr. Jones, you said you have that list. I'd like to
15 have that provided to us.

16 CMRA has prepared a position statement on the
17 tiered regs. I will not go into it now, to save you the
18 time. However, this is part -- I would like to have this
19 as part of the written record. My name and address and
20 E-mail are on here. So if we could have that list sent to
21 us, that would help for me to understand who the bad
22 players are that need to be corrected. So I'll give that
23 to you. That is position statement from our working group
24 that we formed on these tiered regs.

25 A lot of what I was going to mention before, for

1 one thing, has been discussed before, so I won't go into
2 it. And also my ideas have changed because a new set of
3 regulations came out Monday of last week, I believe, and I
4 haven't had a chance to look at them. So that may be a
5 little bit outdated.

6 But at any rate, I think that the key points are:
7 That a full solid waste facility permit, whether it's
8 phased in or whether it's required once you get past 100
9 tons a day, CMRA is adamantly opposed to that concept.

10 It is a barrier to recycling for reasons that
11 have been discussed more eloquently by others. But in a
12 way, what I believe the full solid waste facility permit
13 is going to do is going to be camping on the doorstep of a
14 recycling business. It is not required. In all due
15 respect, I would say that too much government is not a
16 good thing. I was with government for 30 years. And I've
17 been retired and had my own practice for more than three
18 years. And I do believe that government can sometimes do
19 a lot more harm than good, in all due respect.

20 An example that comes to mind is the Alcoholic
21 Beverage Control. If you have an ABC license, a liquor
22 license, you don't violate that license after you've paid
23 for it. You make sure that everyone who's drinking is of
24 age and the bar closes at 1:45 p.m.

25 There is no one from the ABC who sits on a

1 barstool all day and makes sure that you do that,
2 hopefully. They'd be shwacked if they did. The point is
3 that ABC has these rules and everyone follows those rules.

4 There's no reason that you can't come up with a
5 set of rules and a good recycling facility will not
6 operate according to those rules. I firmly believe that.

7 The couple of other points that I'd like to go
8 into that are not already covered in the position paper
9 are that the 100 tons per day we would like to see that
10 that is on a monthly average. There will be days when a
11 facility will have 120 tons come in. They turn away
12 trucks, then that truck is not going to come back again.
13 If you go to ABC recyclers and they say, "I'm sorry, we've
14 already got our 100 tons a day, you have to go somewhere
15 else," you lose that business right there.

16 The 500 tons a day I would also recommend as a
17 monthly average as well.

18 I have a problem I brought up before and I will
19 bring up again with the fourth part of the four-part test.
20 And it is that which restricts commingling of wastes. The
21 only waste that can be commingled under the current
22 reading are lumber and metal. I'd like an explanation if
23 anyone can give it why just lumber and metal, and not like
24 cardboard, for example. A huge amount of cardboard gets
25 generated. Please look at the fourth part of the

1 four-part test and take a look to see whether all types of
2 recyclable construction and demolition materials could not
3 be commingled. That is a major barrier to recycling.

4 We asked in September in a formal letter to this
5 Board for a clarification to be placed in the definition
6 of "putrescibles," that putrescibles do not include such
7 materials as cardboard, wood, drywall, and carbonate
8 because they are not rapidly decomposing. That request as
9 far as I know in the current version of the regs has been
10 ignored. We'd ask you to look at that again.

11 I have a couple other requests. And I'll just
12 really wind it up.

13 One is I'd like to have a copy of the -- I would
14 challenge the California Refuse Removal Association to
15 provide a list of the facilities that are recycling C&D,
16 the types of materials that are being recycled, the
17 percentage of the materials that are being recycled. And
18 as they have stated for the public record that they are
19 recyclers, I'd like to see what they're recycling. And in
20 response to that, I would provide a list of facilities
21 that are recycling as well.

22 And as I mentioned before, I'd like a copy of the
23 bad players that the Integrated Waste Management Board or
24 its staff have.

25 And with that I would close and answer any

1 questions you may have.

2 CHAIRPERSON PAPARIAN: Any questions?

3 No.

4 Thank you, Mr. Ingalls.

5 Mr. Cannella, welcome back. Do you have any ex

6 partes?

7 COMMITTEE MEMBER CANNELLA: I do. I spoke to

8 Mark Murray from Californians against waste.

9 CHAIRPERSON PAPARIAN: Okay. Thank you.

10 Mr. Medina.

11 COMMITTEE MEMBER MEDINA: I have a note here that

12 I received a call from Kevin Drew, San Francisco's

13 Environmental Office. He's unable to be here today.

14 However, San Francisco would like to see a higher number,

15 as they feel that the proposed 100 tons per day is too

16 restrictive. That's the message that he conveyed.

17 CHAIRPERSON PAPARIAN: Okay. Thank you.

18 Larry Sweetser.

19 And just so everybody knows the order I have.

20 Larry Sweetser, then Chuck White, then Steven Bantillo,

21 then Mark Murray.

22 Don, I'm sorry to say you -- I moved you to the

23 end of the line when you weren't here. But it was the

24 fair thing to do. You may wind up having the last word.

25 Mr. Sweetser.

1 MR. SWEETSER: Yes, Larry Sweetser on behalf of
2 the Rural Counties Environmental Services Joint Powers
3 Authority.

4 And I have a very focused concern, the same one
5 as last month's. It's a totally different issue than the
6 others, and hopefully it's a simple fix. And that's
7 regarding the public works corporation yards.

8 Those are the areas where public work agencies
9 have bunkers set aside for gravel, rock, sand, other types
10 of materials. And they're used in road work, other types
11 of construction activities.

12 Now, the definition of inert debris clearly
13 leaves out and excludes anybody that has those materials
14 in their virgin form or native brand new materials. The
15 issue is is that they take in any recycled materials or
16 any reused materials. For example, if they take in chunks
17 of concrete to use in riprap or other uses, those would
18 fall under regulation under certain conditions.

19 And this happened when the authority said when a
20 section on public works was moved and changed over to the
21 authority section, which is now only limited to
22 construction work at the time of construction or during
23 the course of construction.

24 And with those facilities that they take in any
25 of those materials would now be considered inert recycling

1 centers, subject to the storage times of 6 months if it's
2 unprocessed or 18 months if it is processed.

3 Now, some of that material may sit there more
4 than 18 months. In that case if it does, it then becomes
5 an illegal or unlawful disposal activity.

6 Quite simply, so if you have native materials
7 there, buy brand new materials, you're okay. But if you
8 take in any reused materials, then you'd be subject to
9 their recycling center requirements and all the operation
10 requirements that go along with it. And If you would
11 agree a simple fix would be simply to add to the
12 activities that are not subject to Section of
13 17381.1(e) (3) where you already have facilities like
14 material production facilities and some other activities,
15 just adding in federal, state and local public works
16 agencies. And that would allow them to take those
17 materials and handle them.

18 CHAIRPERSON PAPARIAN: Any go back what section
19 number again Suite 17381.1(e) (3), "storage times do not
20 apply to," and just adding in those agencies --

21 CHAIRPERSON PAPARIAN: Do you want to respond to
22 that, staff?

23 MR. DeBIE: I think our quick response would be
24 that we feel that the regs have a lot of flexibility in
25 terms of extending those timeframes, that the timeframes

1 indicated are the minimum ones, but there are various ways
2 of having those timeframes extended out. So the public
3 entity that has these materials on site could go to the
4 LEA and say, you know, we're going to be using these in
5 two to three years. You know, could we extend the time of
6 having those on site longer? And the LEA would evaluate
7 that and determine whether, you know, they could do that
8 without creating any issues, and conceivably grant that
9 permission.

10 Without further study I think staff are hesitant
11 to make a distinction between a private entity that may be
12 accumulating these materials and a public entity that
13 might accumulate the materials. Certainly there is
14 greater assurance that the public entity will be and
15 around and available to deal with any issues that generate
16 from that pile. But we would need to look at what those
17 protections are and whether they would be adequate to
18 address the issues that we have with -- potentially with
19 private entities accumulating a large quantity of inert
20 material for a long period of time.

21 CHAIRPERSON PAPARIAN: Do you want to respond to
22 that?

23 MR. SWEETSER: Oh, just it would be another
24 hurdle for people to go through. And I'm sure most public
25 agencies aren't aware that those types of facilities would

1 be captured in these rules, so you'd have to educate them
2 that they're in and then have them go ask their LEA's and
3 prepare the documentation necessary to ask for an
4 extension.

5 It seems like a lot of work for something that
6 doesn't appear to be intended to be regulated in the first
7 place from a public agency.

8 MR. DeBIE: I think the situation would arise is
9 that an LEA would become aware of this practice, either
10 through, you know, a course of events of investigating
11 various things within their jurisdiction or problems
12 arising from it that it wouldn't be incumbent on the
13 operator to, you know, be omnipresent and know that
14 there's a new requirement.

15 And I don't think the requirements are that
16 onerous. It's pretty much just a noticing-type
17 requirement and a discussion. There's no formal approval
18 that's required, no hearings, nothing like that. It's
19 pretty straight forward.

20 CHAIRPERSON PAPARIAN: Okay. Any other
21 questions?

22 Okay.

23 MS. SWEETSER: Just seems like a lot of work.

24 Thanks.

25 CHAIRPERSON PAPARIAN: Thank you, Mr. Sweetser.

1 Chuck White.

2 MR. WHITE: Thank you, Mr. Chairman and members
3 of the Committee. Chuck write with Waste Management.

4 To try to go through without being repetitive of
5 what others have said, our feeling is that there really is
6 action needed on these regulations. Not today necessarily
7 or next month, but in the near future.

8 This whole process of developing C&D regulations
9 has been going on for almost 10 years now, since the
10 nontraditional LEA advisory was issued. I think it was in
11 '93. And it basically took C&D waste facilities out of
12 direct regulation or created that question in most
13 people's minds. And so I really hope that we can during
14 this rulemaking process bring this to closure, at least
15 with this go-around. And so I would certainly hope and
16 emphasize the need to get these regulations in whatever
17 form you ultimately decide out within the timeframes of
18 this particular package.

19 We do support the 100-ton-per-day threshold,
20 consistent with transfer and processing regulations.
21 There is a problem in the text that while the table was
22 changed a lot of the text in the regulations you have in
23 front of you don't reflect that change. And I'm hoping
24 those corrections are made.

25 I'm also hoping that if we go through a couple

1 more changes, that we can have some kind of guide, maybe a
2 bulleted check list of the changes that staff makes from
3 each version to the next. It was very difficult, for
4 example, to find that the food waste requirement, the zero
5 tolerance for food waste was actually removed. I didn't
6 discover that till this morning when I walked in, when I
7 saw that that language had been removed.

8 It would have been helpful to have a little
9 bulletized summary of those changes that had been made
10 just to help facilitate the understanding of what had in
11 fact been done.

12 Some of the concerns that we have are more
13 technical in nature. And whether or not you choose to
14 incorporate them before you go to public notice or
15 consider them as part of the next 15-day notice process,
16 we don't really care. But we do feel that it is necessary
17 to move forward.

18 There seems to be an inconsistency in the
19 definitions in a number of areas. For example, the
20 definition of construction and demolition debris, there's
21 a specific -- It looks like it's (e) (1) of the section on
22 page 4, talks about "C&D debris includes only the
23 following items which meet the above criteria." And then
24 down below in paragraph 3 it talks about, "notwithstanding
25 anything contrary, C&D debris includes other materials

1 that weren't included."

2 So there seems to be kind of an inconsistency
3 there between those two sections, and one section saying
4 what it does include. It's limited only to those
5 materials in that paragraph 1. But then paragraph 3 goes
6 in and adds additional materials that are included in the
7 definition of C&D debris. And that's kind of -- any time
8 you see the word "notwithstanding" it seems to me there
9 could be a little more time spent to clarify exactly what
10 you intend to regulate and how.

11 We also would like to have the food waste zero
12 tolerance added back in to the regulations, which is on
13 line 16 of that same page 4.

14 With respect to the facilities that are
15 regulated, one of our concerns is that there's a broad
16 range of types of facilities that are C&D materials and
17 have not been required necessarily to get permits for
18 almost these 10 years, some which are very dirty and some
19 which are hopefully more clean. And the problem is, none
20 of these facilities have permits. And now you're creating
21 this universe or category of facilities that you'd call
22 C&D debris. For example, they have to have one -- less
23 than one percent putrescible. And you're establishing
24 this timeframe for them to get permits.

25 The question as I read the proposed language is

1 what's the timeframe for those people that do not meet
2 that definition of C&D debris? For example, they may
3 think they're handling C&D debris, "I've never gotten a
4 permit because of the nontraditional LEA advisory," but
5 handle more than one percent. And the language is not
6 clear whether or not they have access to that one
7 paragraph that's on page 23, it's paragraph C, that allows
8 that three-year period in order to operate under a
9 registration permit.

10 I think it is clear at least that these people
11 that are not actually C&D debris but are handling C&D
12 wastes that are above the 1 percent, they have the 30, 60,
13 100 day timeframe to get their notification, registration
14 or full permit. But do they have access as well to the
15 three-year process under registration before they have to
16 get their full permit? The language can be interpreted
17 both ways. And I would certainly -- I believe from
18 talking to staff the intent is not to give the three-year
19 period for those people that are operating outside the
20 time -- the definition of C&D debris. And if so, I would
21 ask that that issue be clarified.

22 One other concern I have has to do with those of
23 us that are current permit holders and how do we make
24 adjustments and take in perhaps additional wastes to
25 compete to those people that may have been scoff laws in

1 the past, have never gotten permits, and may in fact want
2 to be able to increase their tonnage. Under this
3 three-year period a registration permit is issued. There
4 may or may not be any tonnage limits imposed by the LEA on
5 that registration. They have three years to keep on
6 taking more and more waste, and until such time as they
7 decide to get a full permit. Which presumably at that
8 point in time there would be specific tonnage limits. The
9 problem is, if those of us that already have permits --
10 we're locked into what our permits say. We can't possibly
11 increase without going through a full permit process.

12 So it seems to me there's a bit of an inequity
13 there with respect to how much tonnage you can increase
14 during this three-year hiatus while you're operating under
15 a registration tier. And I would ask that there be some
16 mechanism to hopefully control or restrict the ability to
17 increase under the registration permit without getting a
18 full permit. And I'm not sure how you'd do that. Maybe
19 the staff has some ideas. But there needs to be some kind
20 of fairness provision for those that have gone ahead and
21 gotten permits and are subject to the permit limitations,
22 as opposed to those who have not and may have actually
23 ironically more flexibility during this three-year period.

24 I think that's really it for our comments today.
25 We'd really like to see this process move forward and see

1 these regulations adopted. We certainly don't want the
2 same thing that happened last go-around where a decision
3 couldn't be made and there's no regulations in place. And
4 that would be the worst of all outcomes as far as we're
5 concerned.

6 Thank you very much.

7 CHAIRPERSON PAPARIAN: Any questions of Mr.
8 White?

9 I think I have one.

10 On your last point, because I thought about this
11 a little bit too. I also worry about people in the future
12 who want to get in this business, you know. Or maybe
13 you're at 90 tons under a notification permit and want to
14 come up to 110 tons or 130 tons or something like that,
15 then needing to go for the full permit right away in order
16 to make that leap.

17 MR. WHITE: Which is what we would have to do.

18 CHAIRPERSON PAPARIAN: Right.

19 So I'm wondering, if your concern was dealt with
20 in terms of past facilities -- facilities been operating
21 in the past, would you be open to a balancing where you
22 would also allow future facilities to get similar
23 treatment?

24 MR. WHITE: Well, I would like to see anybody
25 that has to start operating under this registration

1 permit, that there be some understanding that they cannot
2 increase their tonnages beyond what they are today, and
3 then they have to get their permit within three years. If
4 that were two years -- maybe a shorter period time would
5 actually be more appropriate from our viewpoint. But they
6 can't certainly increase during -- if they're going to
7 increase substantially, and whatever substantially means
8 of course is always up to judgment, but if they try to
9 increase their tonnage, they're going to have to get a
10 full permit sooner than that two or three year permit
11 would allow. They just simply cannot just continue to be
12 a scofflaw, for those that are scofflaws and have taken
13 advantage of the lack of requirement to get a permit for
14 handling this kind of material. And we would like to see
15 there to be a level playing field with those of us that
16 have already gone to the trouble and gotten a permit.

17 CHAIRPERSON PAPARIAN: Any other?

18 Thank you very much.

19 Steven Bantillo, followed by Mark Murray,
20 followed Jeff Kroeker.

21 MR. BANTILLO: Good afternoon. Steven Bantillo.
22 I'm representing the Construction & Demolition Council of
23 CRRA, as well -- based on some comments I heard from some
24 folks earlier, I feel the need to throw in my city of San
25 Jose hat at least briefly to share some experiences from

1 that. I managed the city's construction and demolition
2 recycling program.

3 Some comments were made earlier about the
4 landfills doing -- solid waste facilities doing a
5 tremendous amount of C&D recycling. But in establishing
6 the city's program we did a study, several gate surveys as
7 well, to determine where the materials were coming from
8 and where they were going. And we found that the
9 tremendous amount of mixed C&D materials were going to the
10 landfills and, in fact, were getting buried there or used
11 as alternative daily cover, which is why we designed our
12 program the way we did. Requires a deposit from
13 developers and builders. In order to get their money
14 back, they need to demonstrate that they've recycled or
15 diverted that material from the landfill.

16 So part of our process was to certify recovery
17 rates and set a minimum standard of 50 percent at as many
18 facilities as we possibly could to make it convenient for
19 the builders to get their money back.

20 Well, the incentive for facilities to participate
21 and start recycling, the landfills included, was that of
22 competition and a level playing field, of course. And if
23 they didn't signed into our program and boost their
24 recycling rates, then those materials would more than
25 likely go to their competitors.

1 So we have 22 facilities in the South Bay Region
2 that are all signed on. Mixed C&D facilities, their
3 target is a minimum of 50-percent recovery. And in the
4 inert facilities we've got a 90-percent recovery rate for
5 them.

6 In the first year of operation the program
7 diverted over 150,000 tons of mixed C&D.

8 Processing facilities are an integral component
9 of the success of this program. Our concern is that
10 requiring a solid waste facilities permit for a number of
11 these facilities might cause a couple of them to drop out.
12 In order to increase the processing capacity as well as
13 harder-to-recycle materials, the city actually offered
14 \$750,000 in infrastructure grants to get more folks to do
15 more recycling.

16 Those grants were distributed among three
17 landfills, two small processors, and then one independent
18 operator. And so far we've lost one small processor,
19 mostly because they couldn't meet the conditions of their
20 CUP. And then we've got another small processor that is
21 in a watch right now. We're working with them in hopes
22 that they can get a solid waste facility permit; because
23 in our discussions with them over a year ago, we saw that
24 these regulations were coming down the pike and that they
25 were going to need to get up to speed.

1 Switching to the Construction and Demolition
2 Council hat now. Two main concerns are over the
3 registration tier and the phase-in period.

4 Staff's recommendation for the registration tier
5 was 100 to 500 tons per day as a means supposedly of
6 protecting public health, safety and the environment.
7 And, you know, they still stand by that 500 tons per day.
8 Our concern is that eliminated the registration tier will
9 provide barriers for existing C&D recyclers to continue
10 recycling and a financial barrier for new recyclers to
11 start a business. Some of these comments you heard from
12 previous speakers.

13 We would consider supporting a registration tier
14 of 100 to 300 tons per day if the main issue of concern is
15 tonnage and the idea that there could be some additional
16 residue sitting around that is a problem for the local
17 jurisdiction or the LEA's.

18 The facilities are already subject to local
19 patrol through conditional and/or land use permits. And
20 who better to understand those operations in establishing
21 conditions of permits than the local jurisdiction? We
22 would suggest and hope that they could stay under the
23 purview of the local jurisdictions as far as establishing
24 CUP's and land use permits, with the enforcement agencies
25 having some authority in establishing what those

1 conditions are.

2 Considering Mr. Walker's comments during the
3 Deputy Director's report regarding the shortage of staff
4 for inspections. It's very unclear how the additional
5 inspections, if these in fact are all moved into the solid
6 waste facilities tier, can be performed if facilities
7 have -- facilities that move into that tier with a
8 shortage of staffing, how the inspections are going to be
9 performed.

10 On the phase-in duration. We believe that a
11 two-year phase-in to a solid waste facilities permit tier
12 is too short. A good example of permitting duration at
13 least in San Jose is Zanker, which I know Mr. Jones spoke
14 of favorably of earlier. It's a wonderful facility. And
15 a point of fact thought, it took them at least seven years
16 to get fully permitted. And I know during their earlier
17 years, when they were trying to establish that facility,
18 they worked with the legislators to change Public
19 Resources Code to allow them to continue to operate and
20 instead, you know, not have the LEA issue a cease desist
21 order. That Public Resources Code sunsetted I believe in
22 1999.

23 So going from a ministerial permit, which is the
24 registration tier, to a discretionary permit, which is the
25 solid waste facilities tier, there's no guarantee that any

1 of these facilities are actually going to be able to get
2 their permit.

3 And like some of the previous speakers, we're
4 also concerned that now you're opening up these permits to
5 public review -- and I don't have a problem with that.
6 You know, I think that the facilities should all be
7 operated on a level playing field as well they should be
8 adhering to all local and state laws. But at the same
9 time, as soon as you start calling it a solid waste
10 facilities permit and they start to behave, at least in
11 the minds of the local jurisdictions and planning boards
12 and commissions, as a solid waste facility, which they
13 associate with landfills, it brings a tremendous amount of
14 concern within the local community.

15 One of the things that I found in reviewing this
16 issue was in the State Auditor's report on the Waste Board
17 and its enforcement activities and associated issues with
18 solid waste facilities and recycling facilities, and in
19 that report for December of 2000 they pointed out that
20 there is an environmental justice issue in that there's a
21 disproportionate number of recycling facilities in areas
22 of low income as opposed to landfills. And there's
23 also -- it's also my understanding that there is going to
24 be a proposal or there may be a proposal to include in the
25 CEQA process in the future the requirement that

1 environmental justice be addressed in the CEQA documents.
2 That being the case, it's going to be increasingly
3 difficult for these recycling facilities, new and
4 existing, to continue.

5 One of the things that we'd like to see if in
6 fact the phase-in period does go into effect, that some of
7 the authority be given to the local enforcement agencies,
8 because who better to understand the operations of these
9 facilities and make some judgments about whether or not
10 the facilities are making appropriate efforts in order to
11 gain the facilities.

12 The political process is very strong in a lot of
13 jurisdictions, particularly in San Jose. As I mentioned
14 earlier, it took Zanker over seven years to get their
15 permits. Our concern is -- and particularly my concern is
16 a lot of those same folks that I see from the industry who
17 come here to speak that everybody needs a solid waste
18 facilities permit are the same industry representatives
19 that show up with the local planning boards and
20 commissions, lobbying those members to not let the various
21 facilities in that area get the solid waste facilities
22 permits or to interfere, I suppose, with the conditional
23 use permits on their way to solid waste facilities
24 permits.

25 And that's it. I'm here for questions, if you

1 have any.

2 CHAIRPERSON PAPARIAN: Any questions?

3 COMMITTEE MEMBER JONES: Just one.

4 Part of the seven years that it took was because
5 of the addition of a piece of land. I mean there was --
6 you've got -- I forget who it was, the fiberglass --

7 MR. BANTILLO: Owens-Corning?

8 COMMITTEE MEMBER JONES: Owens-Corning.

9 That was all part of that thing. And that took 4
10 1/2 years just to get legally figured out who owned what
11 and who had liability. So I just think for the record the
12 seven years was not the permitting process. It was the
13 fact that the person that owned the site needed to include
14 another piece of ground that was in a state of flux at
15 different periods. So I don't think that's a very good
16 example of a seven-year period because it included adding
17 property to an existing facility. You know, I mean I was
18 there. So I don't --

19 MR. BANTILLO: I know. I saw you at the opening.

20 COMMITTEE MEMBER JONES: But, you know, it's not
21 a seven-year process.

22 MR. BANTILLO: I understand. But my point is
23 that, you know, from the time a facility needs to initiate
24 the process, because of things that may be beyond their
25 control or maybe they do have an interest in expanding

1 their properties, that process is extended to some degree.

2 CHAIRPERSON PAPARIAN: So how long did it really
3 take then from the point at which they said, "We're going
4 to go out and get a permit," to the time they actually got
5 the permit?

6 MR. BANTILLO: It was over seven years.

7 CHAIRPERSON PAPARIAN: So they said they have to
8 get a permit, then they realized that there was some other
9 land ownership --

10 COMMITTEE MEMBER JONES: Yeah. I mean it was --
11 it was all intertwined.

12 MR. BANTILLO: It was all intertwined. There was
13 a couple of properties and a number of permits. But their
14 plan was to include this additional property. And it
15 extended the permitting process because of that.

16 CHAIRPERSON PAPARIAN: I mean it seems to me that
17 there will be -- in most cases you're not going to have a
18 situation like that. But it seems like there will be
19 situations where things like this will happen. And it's
20 not the fault of the person seeking the permit that this
21 has to get sorted out. It just takes some extra time.

22 COMMITTEE MEMBER JONES: No. And I would agree
23 with you. Sometimes it does take time. I think it's a
24 pretty -- I think that when you look at some of the
25 testimony that was given about environmental justice and

1 the concerns about, you know, CEQA and the fact that
2 competition does in fact sometimes bring up issues, that
3 works on every side of the table. I mean don't -- believe
4 me. I saw somebody going for a permit, and I saw the
5 environmental justice card played in front of this Board
6 when it had never been an issue until the time that we
7 were going to consider whether or not to concur in permit.

8 So, you know, everybody likes to use whatever
9 they got. Unfortunately I don't think it's always very
10 judicious. But some people don't mind shooting themselves
11 in the foot once in a while, you know.

12 CHAIRPERSON PAPARIAN: Okay. Mr. Cannella has a
13 question.

14 COMMITTEE MEMBER CANNELLA: Yeah, I do. And I'm
15 kind of puzzled by what I just heard you say. Are you
16 saying that because of local politics this Board shouldn't
17 regulate those sites? That because they have influence
18 locally and they can stop things, that we ought to deprive
19 the locals of having a process whereby they can protect
20 their health and welfare and not allow for this type of
21 permitting thing but in fact say, "You guys can do this
22 unregulated because local politics is strong that we could
23 never do anything."?

24 MR. BANTILLO: No, I don't believe that's the
25 case.

1 COMMITTEE MEMBER CANNELLA: Well, you just said
2 though that because of local politics and everything that
3 was involved, that it was difficult to get a permit. So
4 it sounded to me as you were saying that because you have
5 all this local politics, you have all of this lobbying
6 going on locally -- and I apologize for the word
7 "lobbying." I couldn't think of another word.

8 (Laughter.)

9 COMMITTEE MEMBER CANNELLA: -- that we ought not
10 to go through the permit process because all of these
11 actions locally are distorting the process and eliminating
12 folks from being able to do business.

13 MR. BANTILLO: I'm not saying that the permit
14 process should be eliminated. But the point that I was
15 making -- and unfortunately I rambled a little bit, wasn't
16 as clear as I'd hope -- but the point is there are a lot
17 of activities at the local level that interfere with the
18 timeframe that we all anticipate being two years with some
19 kind of an extension. There were speakers earlier who
20 said it needs to be cut off right away. And my point is
21 that, if you cut it off right away, you're going to knock
22 the facilities out of business or not allow some
23 facilities to get a new permit to enter into business and
24 competition with these other folks. The local politics
25 being what they are can interfere with that to the degree

1 that it extends it beyond the timeframe that we would, you
2 know, expect to see in the regulation.

3 COMMITTEE MEMBER CANNELLA: And that goes for big
4 processors and little processors as well.

5 The other question I had was you mentioned that
6 you folks in San Jose took the initiative to educate folks
7 about what may be coming down. And of all the people that
8 were in business, one left. Why did they leave? What was
9 the problem?

10 MR. BANTILLO: They had a conditional use permit
11 that they were, let's say, challenged to meet those
12 conditions. The council district in which they were
13 operating, the council member at the time, every time
14 there was an issue, they wanted to bring this operator
15 into the office and review the permit process and try to
16 put some additional conditions on there. They wanted them
17 to sort of beautify the neighborhood as a condition of
18 upgrading their permit. Which, you know, when you're
19 talking about an M4 zoning, industrial, you know, would
20 you expect a small operator to undertake capital
21 investment in the neighborhood around them when they can
22 do things -- you know, litter prevention programs and
23 things like that? But when that same condition isn't
24 being applied to the rest of the businesses in the area,
25 it doesn't seem like it's fair.

1 COMMITTEE MEMBER CANNELLA: And that's why
2 they --

3 MR. BANTILLO: They couldn't meet those
4 conditions and had to leave.

5 COMMITTEE MEMBER CANNELLA: Thank you.

6 CHAIRPERSON PAPARIAN: Thank you.

7 Mark Murray, followed by Jeff Kroeker, Curt
8 Fujii, and Don Gambelin.

9 Mr. MURRAY: Mr. Chair, members, Mark Murray,
10 Californians Against Waste. Once again appreciate the
11 opportunity to comment on this issue.

12 I want to express my appreciation, our
13 appreciation for the work of both the Board and your staff
14 on this issue. A lot of thoughtfulness has been put into
15 this. And I think that for good reason we've got a bit of
16 a dilemma here. And it's been described earlier that
17 there's two sides of the isle here. Folks are on one side
18 or the other of the isle here. And you're either for
19 regulation and environmental review or you're for
20 recycling, and somehow you can't be for both of those
21 things.

22 So I don't fit on either side of the isle on this
23 issue. And I think that there is a middle ground here to
24 be found. And I keep hearing -- mostly I keep hearing
25 that middle ground, frankly, coming from your staff. And

1 I think maybe in this instance, when in doubt, trust your
2 staff.

3 The facilitated workshop that took place last
4 month now, I guess, I thought was very helpful in terms of
5 bringing the various stakeholders together. Unfortunately
6 that process was limited in terms of what we could
7 actually discuss. And I understood the reason for doing
8 that. But I think that the current state of the
9 regulations are not ready to move forward. And I think
10 this process would benefit from taking the issue back to
11 that workshop process and allowing us to discuss a number
12 of these other issues that I think -- we couldn't talk
13 about at that workshop and that have been raised by both
14 sides as why this process won't work or why this process
15 will work.

16 So let me just kind of describe some of those
17 specifics. Number one, we got into this whole thing
18 because of our desire to actually create incentives for
19 these C&D recycling facilities to exist. And I don't
20 believe that the current state of these regulations will
21 provide that encouragement, that incentive that we are
22 looking for.

23 At the same time, I don't think it's a good
24 public policy to have facilities that are handling this
25 much material unregulated. And so I think it's

1 appropriate that we find this middle ground.

2 The one specific I put there first and foremost
3 on the table is that this is an issue, this is an instance
4 where we think there needs to be a permanent registration
5 tier, as your staff initially had suggested, something in
6 that 100 to -- again, I trust your staff on this more than
7 I trust myself in terms of trying to figure out what the
8 number is, but it seems somewhere in that 100 ton to 300
9 ton per day -- it seems that if a facility is operating
10 properly, is only taking in C&D material, that the
11 impacts, the environmental impacts, the health and safety
12 impacts are so minimal that a registration tier is
13 appropriate.

14 At the same time, there are -- I've got some
15 concerns about some of these C&D facilities out there
16 operating with no kind of residual standard. And we think
17 that it's appropriate to maybe marry those two issues, of
18 a registration tier with some kind of a residual standard.

19 The putrescible issue. I think Mr. Jones raised
20 a very good point in terms of a facility, you know, a
21 thousand ton per day facility, one percent putrescible in
22 that facility is a lot of material. I'd be very concerned
23 if that was regulated as a C&D facility and yet it was
24 bringing in loads maybe from an apartment complex or
25 someplace else that had a lot of putrescible. It seems to

1 me that it may be appropriate to not just try and create
2 this creative regulatory tier that protects and creates
3 incentives for these true C&D recyclers, that maybe we
4 need to -- to use a cliché -- to think outside the box a
5 little bit with what the provisions of these regulations
6 are. And maybe we have to look at not just what is the
7 percentage of putrescibles on average for the facility for
8 the month, but what about individual loads that are coming
9 into that facility, so that there's an opportunity for the
10 LEA to do a load check on a facility to see is it coming
11 in at more than five percent on an individual load? It
12 seems to me that more than five percent on an individual
13 load -- it may not add up to more than one percent at the
14 end of the month for that whole facility, but if they're
15 accepting waste that's got five percent putrescible or
16 more, that's not a C&D facility.

17 So I think there continues to be a lot of detail
18 work left to be done on these regulations. And I don't
19 think that we're going to get there today. I want to --
20 again I want to request that you kick this back to the
21 workshop process with a broader agenda, issues that we can
22 work on and discuss. We think that there needs to be a
23 permanent registration tier. We think that there should
24 be residual standards for these facilities.

25 I've also been enlightened in the last couple of

1 weeks about the fact that sometimes the smallest
2 facilities, that are doing a very important job and nobody
3 else wants to do, handling less than 100 tons per day,
4 some of those facilities have the toughest time meeting
5 the residual standards.

6 So I think we need to take a look at this in a
7 creative way. I know you've put a lot thought into this.
8 But I think that this is one where a little more thought
9 is what's needed, a little more time. And, again, I think
10 that, as I've gone through all this and listened to all
11 the various stakeholders, I continue to think that your
12 staff is getting it right. And I think that -- I would
13 encourage you to allow them to put back on the table the
14 permanent registration tier that they had initially
15 discussed two months ago.

16 Thanks a lot.

17 CHAIRPERSON PAPARIAN: But the permanent
18 registration tier you're suggesting at 300 as opposed to
19 the 500 that they had?

20 MR. MURRAY: Correct. I'm trying to -- again,
21 Mr. Jones made a statement at the last meeting in terms of
22 just quantifying the number of truckloads that a 500 ton
23 per day facility was. And that had an impact on me. And
24 so it seems to me bringing that number down from 500 may
25 be appropriate. And, again, I -- you know, I don't know

1 if I would know the difference between a 500 ton per day
2 C&D facility and a 300 ton per day facility, or even a 100
3 ton per day facility, frankly. But, you know, finding
4 some middle ground there in this instance seems to be
5 appropriate.

6 And, again, you know, I -- I think that this is
7 one where having the two sides of the isle that you've
8 been listening to all morning long and now into this
9 afternoon is not going to get you any closer to finding a
10 solution here. I think that this is one where you've got
11 to kick it back to staff and communicate that -- I see a
12 dilemma here. I mean I see -- these are two importance
13 stakeholders. And clearly the waste haulers are doing a
14 hell of a lot of recycling. They've made an investment in
15 the process. And, frankly, a lot of them have gone
16 through this environmental review process, and I can
17 appreciate them being ticked off that there's another set
18 of recyclers out there that may or may not have gone
19 through that environmental review process.

20 So I don't envy you the dilemma you have. I
21 guess I'm suggesting that you maybe direct your staff to
22 provide you some -- applies a little creativity to this
23 problem and see if there's a way to find a little bit of a
24 middle ground. I'm seeing a little bit of a middle ground
25 in terms of this registration tier. But I also think we

1 have got to do a little -- on the other side of it I think
2 that there's got to be some residual standards, there's
3 got to be some recycling standards for these facilities.

4 CHAIRPERSON PAPARIAN: Mr. Jones.

5 BOARD MEMBER JONES:

6 COMMITTEE MEMBER JONES: No, I was just agreeing
7 with Mr. Murray.

8 CHAIRPERSON PAPARIAN: You want to put that on
9 the record?

10 COMMITTEE MEMBER JONES: No. That's why my
11 mike's off.

12 CHAIRPERSON PAPARIAN: Mr. Kroeker.

13 MR. KROEKER: Good afternoon. Jeff Kroeker
14 representing Kroeker Demolition and Recycling.

15 There's a couple things that were brought up
16 earlier -- and we're not scoffing the law, if that's the
17 word that Mr. White used. We've applied to get all the
18 permits that were necessary when we opened up and went
19 through the land use permit. Now you're applying more
20 permits to us.

21 If those permits are easy to get, which I've been
22 told they are, then can you have staff help us fill out
23 those permits and proceed with the existing C&D recyclers?
24 I can't afford you guys with the suits and the ties and
25 the attorneys and -- you know, it's new to us. I called

1 the county, and they said, "Oh, boy you're going to need a
2 lot of help with this." Well, maybe you guys could
3 furnish some help if you're going to apply these permits.
4 You know, I don't mind getting it. Just give us some help
5 getting it. You know, have some staff help us fill out
6 the paperwork or lead us through this process. It's not
7 something that we do on a daily basis like these people
8 do.

9 And I know that's going to open up -- I'm sure
10 they have lots to do. But so do I. You know, I do
11 everything, drive the loader, run the excavator, and drive
12 the truck. So I mean we do a lot of things also.

13 I notice that staff did take out the employee
14 food waste, which is what they should have done,
15 because it's -- I would rather have an employee on the job
16 site throw the dead hamburger in the roll-off box rather
17 than throwing it on the ground and having litter spread
18 out throughout the job site. When it gets to a facility,
19 you're going to pick it out and throw it away. It goes to
20 the garbage. It's not something we want, but it's an
21 incidental waste, and I would think that would be part of
22 that one percent putrescible. We don't want it, but I'd
23 rather have it going to a facility than on the ground.

24 And the timeframe, if the three years -- if you
25 do accept those proposed regulations, the three years with

1 the help of somebody, you know, leading us through this,
2 you know, let's go. So just give us some chances to do
3 this. When these people do it on a regular basis, we
4 don't, I just need some help with it.

5 CHAIRPERSON PAPARIAN: Thank you.

6 Any questions?

7 Let me just ask our staff -- I think we did bring
8 this up at one of the prior meetings now, possibility
9 of -- I think, Mr. Cannella, you might have brought it
10 up -- possibility of providing some assistance in applying
11 for permits.

12 Now, you've got also additional responsibilities,
13 as I think somebody testified to today, that if these and
14 the organics regs go into effect, there's going to be some
15 additional responsibilities on staff for inspections and
16 oversight and so forth.

17 What can you handle? Can you handle some --

18 ACTING DEPUTY DIRECTOR WALKER: Well, let me
19 touch on that a little.

20 I think we do have the ability with the
21 Committee's direction to facilitate and assist those
22 existing -- the small existing facilities in order to get
23 their permits, both the LEA and the operator. I mean I
24 think we clearly have -- especially if we have -- I mean
25 we're spending so much time on this reg package now, once

1 it's done we're going to have more time to facilitate
2 getting compliance with it for those facilities.

3 The other thing, with regard to the inspection
4 load, the 18 month mandated inspections are really -- you
5 know, not going to really apply to that. I mean we will
6 have some additional inspections, pre-permit inspections
7 and things like that. But I think we could probably
8 pretty well absorb that.

9 Again, it's going to be dependent upon the actual
10 numbers out there, which ones are going to come out of the
11 woodwork that we don't know of. But right now I think we
12 can certainly handle, you know, the direction to give
13 technical assistance to do what it takes to get these
14 small facilities permitted. And I don't know whether Mark
15 has anything more he wants to add to it. But I know I've
16 talked with him quite a bit about it.

17 MR. De BIE: Yeah, I would. You know, the
18 assistance will come out of my shop. And basically we see
19 our mandate as one of providing assistance. And many
20 times we depend on the LEA's or the operators to invite us
21 into that process to assist them.

22 I think in this case we would do a couple things:
23 One is to assure them that we are available to assist them
24 specifically case by case on these -- bringing this new
25 group of sites into the regulatory structure.

1 And we'll look at ways of being a little more
2 proactive and maybe act as a facilitator in inviting both
3 operators that we're aware of that will be needing to
4 comply and the LEA's and bringing them to the table and
5 starting the three-way conversation about what we need to
6 do to get them through the process as quickly and
7 efficiently as possible.

8 So I think to some extent we're already lined up
9 to do that. And we'll just make sure that these sites are
10 high on the priority list too.

11 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Mr.
12 Chairman, if I might weigh in. One of the things that
13 we've traditionally focused on in the P&E Division is
14 training. And, again, maybe Mark or Scott would want to
15 comment on the efforts that are already under way to begin
16 to design the training that will go along with each of the
17 Regulation packages that we work through with you.
18 Organics being kind of the first one out next on the list.

19 But do either of you want to comment a little bit
20 about your provisions for the training component.

21 CHAIRPERSON PAPARIAN: That may wind up being a
22 longer discussion we could have at a future meeting to --

23 MR. DeBIE: Well, in a nutshell, I think to some
24 extent my vision would be on-the-job training. So let's
25 train you about these new regs as we go through the

1 process with a site and try to accomplish two things at
2 once, get both operators and LEA's up to speed on what the
3 requirements are as we bring them through the
4 requirements.

5 CHAIRPERSON PAPARIAN: Mr. Cannella.

6 COMMITTEE MEMBER CANNELLA: Well, my vision is
7 that we don't do just training. I mean training just goes
8 so far. We have just come through -- the state has come
9 through with a \$24 billion shortfall that affected local
10 government to the tune of a billion dollars; that the
11 projected 18 month shortfall is \$30 billion, and you can
12 rest assured that local government is once again taking a
13 hit. It seems to me that we have people who can go into
14 the field, assist folks in getting the process done of
15 actually being there, moving paper. And I know that the
16 most feared sentence in the world is "We're the
17 government. We're here to help."

18 But I just do believe we have a responsibility to
19 provide -- it's a mandate on local government. And they
20 may or may not recoup all the costs of doing it. But I
21 for one would like to -- not like -- I want to see us
22 provide direct assistance to local government processing
23 these claims so that we could perhaps reduce the amount of
24 time it takes, from 3 years or whatever. But also
25 recognize the impact on local government and having to

1 have more public hearings, having the Planning Commission,
2 the local governments, the staff people process something
3 that we are going to tell them they have to do.

4 And So from my perspective, we have the resources
5 and we ought to make them available. Aside from just
6 training, but we ought to be down there helping these
7 folks get this stuff done.

8 MR. KROEKER: I like his idea.

9 Thank you.

10 CHAIRPERSON PAPARIAN: Thank you.

11 Curt Fujii and then Don Gambelin.

12 And then those are the last speaker slips I have.

13 If I'm missing somebody, you need to fill out a
14 speaker slip and give it to Peggy up here.

15 MR. FUJII: Hello. Curt Fujii with Allied Waste.
16 Thank you for your time.

17 I would like to start off by saying that we also
18 support good operations, good recycling operations, we
19 support independent operations. We frequently contract
20 with small independent recycling operators in areas where
21 basically they do it better than we do. And they've got
22 the system set up, they've get their operations set up,
23 and we don't have to invest the start-up costs in doing it
24 ourselves, so we'll contract with them. So we support
25 good independent recyclers.

1 However, I also feel that there is a need for
2 some additional regulation and oversight. And this is
3 based on personal experience. Also to build upon the
4 discussion that Mr. Jones had at the start of this topic,
5 I think Mr. Jones will recall that what I believe was the
6 first AB 2136 matching grant that this Board awarded was
7 given to a county to clean up an illegal dump that had
8 started off its life as an unpermitted recycling
9 operation. And this grew into a 25-acre illegal dump.

10 I at the time was employed by the company that
11 had contracted with the county to clean up that facility.
12 And we found some pretty interesting things out there. We
13 found syringes. We found mystery materials. I
14 particularly remember what I will call the hissing drum.
15 Every time we moved it, it hissed, fizzed, and fumes came
16 out. And, again, due to the fact that I was with a
17 company that was subject to a high level of oversight and
18 regulation, I had been trained to a higher level than some
19 of the other employees that I had on my crew. So I
20 remember that drum very well. I made sure that I took
21 care of it personally, got it out of the work area and
22 into a fenced, enclosed area. And I was pretty nervous
23 when I did it.

24 And those sorts of things can show up at even
25 well run recycling operations.

1 Our company has a number of fully permitted solid
2 waste facilities. These have the highest, I'd say most
3 thorough level of solid waste facility permit that you can
4 have in this state, and as a result -- partly as a result,
5 I'd like to think too, just because we have a good
6 conscientious operation. We frequently subject our
7 potential customers to a very high level of scrutiny and
8 review, particularly customers proposing to bring us
9 materials from C&D operations and C&D jobs.

10 These types of projects do not generate the
11 totally clean, at least not 100 percent totally clean
12 waste streams that you might envision. They do generate
13 waste materials that are of concern. And even though
14 we're a private company out to make a profit, we have in
15 instances, very rare instances, closed our gates to
16 potential customers from C&D projects. We just haven't
17 felt comfortable with their level of waste identification
18 and classification and management.

19 So we have regrettably called up our potential
20 customers and said, "We're sorry. Don't send us another
21 truckload of material from this facility" or "Don't even
22 send us the first truckload from this operation."

23 So with that in mind, we support the 100 ton per
24 day threshold. We support as short a phase-in period as
25 is possible, because in the interests of public health and

1 proper land use planning and even environmental justice,
2 we think that the higher level permitting scrutiny is
3 appropriate.

4 Thank you.

5 CHAIRPERSON PAPARIAN: Thank you.

6 Don Gambelin.

7 MR. GAMBELIN: I'm not going to be late returning
8 from lunch again, I'll tell you that much.

9 Don Gambelin, NorCal Waste Systems,
10 representing -- I was trying to think about who I was
11 representing today. It's either big or small companies,
12 that we have about -- all of them within the NorCal
13 Companies. So I guess I'll speak on behalf of both the
14 big and large recyclers and waste haulers and everybody
15 else in NorCal.

16 I Initially limited my comments to just the
17 topics that we discussed in the workshop a week a half ago
18 because I thought that's what we were going to be limited
19 to. And I'll stick with that for the most part. But I do
20 think that Mark de Bie initially started out with some
21 interesting thoughts on maybe simplifying a package and
22 putting it into transfer processing regs. And maybe
23 that's not a completely dead idea. So we can return to
24 that at some other point.

25 But let me speak specifically to a couple of the

1 items that again we worked on in the workshop. And for
2 the most part I do want to come out and say that we do
3 support staff's approach on a number of these items in the
4 reg package, but we do have some concerns remaining and
5 some comments that I'll address now.

6 First of all, setting a threshold at 100 tons per
7 day I think is an equitable solution. If I was to step
8 outside of C&D Regulation and look at something else, for
9 instance just predominantly dry recyclables, let's call
10 them paper, cans, bottles, plastics, that sort of thing,
11 if I'm over 100 tons per day and I may be over 10 percent
12 residual, I've got to get a full solid waste facility
13 permit.

14 C&D strikes me as predominantly dry material,
15 very similar. Should it be different than other
16 recyclable materials? I don't think so. I think there's
17 some equity there at 100 tons per day. And so we
18 certainly support that.

19 I think the approach to try and carve out a piece
20 of C&D waste and call it C&D debris, that is, source
21 separated or separated for reuse -- and I think that
22 implies just about 100 recyclable -- it's an interesting
23 approach. I think if it's -- I think this reg package
24 does a good job in providing regulations to support that
25 approach. I think it's a very difficult approach to

1 enforce, and it may put LEA's in the same position that
2 they are nowadays where they're not quite sure what to do
3 with certain facilities that are out there that are
4 handling what looks to be like C&D wastes.

5 And there were some discussions at the beginning
6 again that talked about the Board staff's visits to these
7 facilities saying, "That looks like waste to me, that
8 looks like waste to me." So I think we might run into
9 that same scenario where it's going to be difficult to
10 discern. If somebody's going to claim that they're
11 handling C&D debris, was that truly source separated or
12 separated for reuse? Because you have to meet those
13 definitions in order to qualify as C&D debris. That's
14 going to be a difficult one.

15 Given that definition though, I don't see why
16 there wouldn't be a residual limit. Seems to me just
17 appropriate that if you're source separated, it should be
18 practically 100 percent recyclable. Granted, there's
19 going to be some incidental waste that has to be disposed
20 of. It's not a residual cap. It's just a -- it's kind of
21 a natural conclusion to draw. But that residual cap
22 shouldn't present to anybody a problem as a C&D handlers.

23 I think there is a problem, as Chuck White
24 pointed out from Waste Management, that in the C&D debris
25 definition that it first says that it has to be from a

1 construction site, then it goes on further and it says,
2 well, not necessarily. It can handle stuff that maybe
3 looks like it could have come from a construction site,
4 but doesn't necessarily need to come from one. I think,
5 again, if this reg package is trying to separate out or
6 carve out a piece of construction and demolition waste and
7 call it C&D debris, that it needs to stick with C&D
8 debris. It needs to stick with what comes from a
9 construction site. Anything else is not the same type of
10 material.

11 On the phase-in. We have problems with the
12 phase-in. And let me first set this in context in my
13 understanding because I think my comments might be better
14 understood that way.

15 A week and a half ago in the workshop -- and I
16 think it goes back to the '93 LEA advisory, that the
17 message has been -- although we weren't really aware of
18 this -- but a C&D facility somehow fell in between a
19 recycling facility, which did not need a permit, and a
20 solid waste facility, which needed the permit. So there
21 was some area in there that these facilities operated.

22 Now, even though the Board staff in field trips
23 and whatever may have confirmed that a lot of waste is
24 being handled at these facilities and apparently an issue
25 for enforcement action -- but let's just consider that

1 water under the bridge for the purposes of this
2 discussion. So if we have a group of facilities out there
3 that are in this gray area, what does this reg package do
4 for those facilities? What sort of incentive does it give
5 to those facilities? Well, if I was one of those
6 facilities I'd get bigger as soon as I possibly could,
7 handling more stuff, because when this reg package comes
8 out, I got three to three and a half years of amnesty to
9 work under.

10 Is that the message we want to send? And how is
11 that equitable with the operations that went ahead and got
12 full solid waste facility permits even during this time of
13 uncertainty, are handling similar material, if not the
14 same material, that these unpermitted facilities are if
15 those fully permitted facilities do not have any
16 flexibility within that same three to three and a half
17 year period that's proposed to modify their operation
18 without going through a full solid waste facility permit
19 revision?

20 There needs to be some equity here. And I think
21 that this is a major point why we still have an issue with
22 this phase-in.

23 I think if people are truly C&D debris handlers,
24 they're handling practically 100 percent recyclable
25 material, that's a very different situation, and they

1 would almost anyway be leaning toward the recycling
2 facility exemption in the past. Again, still in this gray
3 area, but it would seem to me that it's more equitable to
4 allow them some time to get a solid waste facility permit
5 as opposed to just C&D waste handlers.

6 I want to speak from experience on obtaining
7 solid waste facility permits. My feeling is this: If you
8 give somebody three years, four years, five years, it will
9 take three, four, or five years to get a permit. If you
10 give somebody one year, they will get it in one year.

11 I've heard a lot of very well spoken people in a
12 public forum today who are C&D recyclers wondering if they
13 can get permits or not. It's not that difficult. I mean
14 I've testified to this many times that I don't know that
15 we've ever been turned down for a permit if there's no
16 significant environmental impacts, if there's no
17 significant issues that haven't been addressed. If
18 they've all been addressed, it seems like this Board has
19 always been able to grant the appropriate permits. I
20 raised it during the organics composting -- compostable
21 materials regs, I guess we'll call them. Again, it's just
22 a permit. It's nothing to be afraid of. If anybody
23 should be afraid of getting permit, it should be me. I've
24 had enough experience in trying to get them. But, anyway,
25 they can be obtained.

1 And as Curt Fujii just testified, they utilize
2 C&D recyclers in some of that infrastructure in the state.
3 So if we're looking at a reg package that is going to be
4 supportive of infrastructure development in the state for
5 C&D processing -- let's set the hauling aside. That's an
6 entirely different issue. There was clear instruction
7 from the Committee to make it franchise neutral. Let's
8 just look at processing infrastructure in the state.

9 NorCal, for one, if it's going to be able to
10 utilize facilities outside of NorCal Companies, it needs
11 to make sure that those facilities are appropriately
12 permitted and have appropriate mitigations and controls in
13 place. I think the only way that those assurances are
14 granted is if there's a regulatory structure for all types
15 of C&D facilities within the state. And we don't carve
16 out certain niches for recyclers that either claim, you
17 know, fiscal hardship or, you know, it just might take too
18 long for a permitting process or "I don't want to go
19 through CEQA because I'm worried about what it's going to
20 say."

21 So let's make sure though that this regulatory
22 structure is in place -- and this is similar to my
23 testimony in composting -- make sure it's in place so that
24 everybody can utilize this infrastructure. And we don't
25 have to worry about gray areas, well, this facility is

1 similar, takes the same material, but it has a lesser
2 permit for some reason than something else.

3 So I'm going to stop there, answer any questions.

4 CHAIRPERSON PAPARIAN: Any questions?

5 No.

6 Thank you very much.

7 Okay, members. We've heard a lot of testimony.

8 Seems like we've got several ways we can approach this.

9 We can move forward with what we have before us, move
10 forward with some modifications. Maybe I should just take
11 a couple of the issues just to see where we're at.

12 One of the -- the regulations as they're before
13 us right now have a 100 ton per day threshold, that over
14 that you would get a registration permit, and you'd have a
15 certain period of time to get a full permit.

16 Okay. So the first question I want to put out
17 there is are we still comfortable with that as a general
18 approach or, as a couple of the people -- several of the
19 people mentioned, should we go back to some form of
20 permanent registration tier?

21 Mr. Cannella.

22 COMMITTEE MEMBER CANNELLA: Well, I think that
23 we've certainly debated the issue for a long, long time
24 just in the short time I've been here.

25 It seems to me that we ought to be moving forward

1 on adopting a reg package.

2 I certainly am supportive of the 100 tons, with
3 the alternatives that you've put at the last meeting we
4 had and, that is, to create a phase-in period. I feel
5 comfortable with that.

6 Some of the issues that I think that I -- I
7 certainly had to have be resolved is one of the questions
8 that were posed at the podium of, you know, who gets
9 registration and what are the conditions on folks who
10 start the permit process that are doing so many tons a
11 day? Are they going to be regulated on how big they can
12 get before they get the full permit? That's something
13 that I don't think we've discussed, or at least I don't
14 remember.

15 As far as the 100 tons with the phase-in period,
16 certainly can support that, with the proviso that I
17 mentioned earlier, that we provide local assistance since
18 it becomes a mandate on local government to expand what
19 they're doing.

20 But, more importantly, I need some answers about
21 what do we do with folks who start the permit process and
22 then expand the operation before they get -- excuse me --
23 they get registration before they start the permit
24 process.

25 MR. DeBIE: Mr. Chair, if I may.

1 CHAIRPERSON PAPARIAN: Yeah, Mr. de Bie.

2 MR. DeBIE: When an operator would apply for a
3 registration permit, they need to fill out an application.
4 And in that application they would indicate the amount of
5 material and type of material they're receiving.

6 That application actually becomes part of the
7 permit. And so it could be viewed that that information
8 is a limiter to some extent of what is allowed or not
9 allowed in that facility.

10 So I could argue that if a facility applied for
11 200 tons per day and was issued a registration permit, if
12 they increased beyond that, the LEA would be obligated to
13 either at that time require them to apply for another
14 registration permit that reflects the change and/or go
15 into the full tier. The LEA and the operator have the
16 ability to move into the full tier earlier than later.

17 But certainly to allow a change, like in an
18 increase in tonnage, there would be a new application
19 process that they would go through. You can't revise a
20 registration permit. You can only issue a new one. So
21 that they would have to go through the process again.

22 So there would be, to some extent, a check and a
23 balance between the operator and the LEA if that facility
24 does grow during the time from when it initially gets a
25 registration permit and a full permit. But there wouldn't

1 be other than that anything to limit them from continuing
2 to grow larger and larger during that three-year period.

3 COMMITTEE MEMBER CANNELLA: But they would also
4 have to update their permit to have the expanded?

5 MR. DeBIE: They would have to have that
6 reflected. And I would argue that if they made that
7 change without doing, they would be in violation of that
8 permit.

9 COMMITTEE MEMBER CANNELLA: Okay. So let's say
10 I'm doing 500 tons a day and I apply for the registration,
11 if that's the way we move. I have six months in which to
12 make an application for a full permit. From the time I
13 register before I start the permit -- or with the six
14 months I have, can I go to a thousand and then apply for
15 the permit based on a thousand even though I was doing
16 500?

17 MR. DeBIE: You can certainly -- no, you wouldn't
18 be allowed. But you could indicate your plans to be
19 larger in the future once you're given the new permit.
20 But the expectation would be that you would not make that
21 change until you were approved either through another
22 registration permit or the full permit.

23 COMMITTEE MEMBER CANNELLA: Okay. So you're
24 confident that there are answers to some of the questions
25 that were raised in this process that we're now developing

1 that there would be safeguards and there would be
2 requirements to do certain things before somebody could
3 grow before the requirements of a full permit were in
4 place?

5 MR. DeBIE: There would be some level of check
6 and balance between the operator and the LEA during that
7 phase-in period.

8 COMMITTEE MEMBER CANNELLA: Is that implied or is
9 that going to be language that will set that in place?

10 MR. DeBIE: No, I think it's fairly clear that
11 the registration process is set up that way.

12 COMMITTEE MEMBER CANNELLA: Okay. Thank you.

13 CHAIRPERSON PAPARIAN: Did you want to speak to
14 this?

15 Mr. Medina.

16 COMMITTEE MEMBER MEDINA: I think Mr. Cannella
17 stated the case very well. And I'm also in favor of
18 moving forward in the regs.

19 CHAIRPERSON PAPARIAN: Mr. Jones.

20 COMMITTEE MEMBER JONES: Yeah, I think so too. I
21 got a problem with the timeframe a little bit too. But, I
22 think that if you can establish -- and I think you need to
23 think this out between now and the Board meeting -- how
24 you're going to be able to notify jurisdictions. I think
25 anybody that's operating one of these facilities ought to

1 let you know right now. I think that jurisdiction --
2 those LEA's need to tell you right now, you know, where
3 recycling or where disposal is operating in Santa Ana,
4 determine whatever the limit is, so that you've got a
5 record of what's going on so that you can start to have
6 something to use when you're getting these through the
7 process.

8 And then I think that these folks that are
9 operating and are still trying to stay outside of the
10 regulatory tier, there's a section in the regs that talk
11 about an LEA being able to go into an excluded operation
12 and check. And then if they're doing activity that is not
13 part of that nonexclusive, then the LEA is to issue a
14 cease and desist order, basically, to stop them. Or maybe
15 it's notice and order.

16 But we've got to -- there has to be some meat
17 behind this that says if you're operating -- I think the
18 staff has to -- I agree with Mr. Cannella. You guys have
19 got to work with these folks, get them into the structure,
20 help them with the paperwork, help them get the stuff
21 through. It should be pretty simple.

22 The ones that aren't, LEA's ought to be
23 instructed to do a cease and desist. It's very similar to
24 AB -- I think it's AB 59 that requires it, right? If
25 you're operating an unpermitted facility, that there be a

1 cease and desist. Because I don't want to see the option
2 that, "Oh, well, this person actually is bringing in 75
3 percent garbage, so we're going to recommend that they get
4 a 10,000 ton a day solid waste facility permit." You
5 know, if they're operating outside the rules, they ought
6 to be shut down.

7 But I think that will give some help. I do worry
8 about the Wares and some of these other folks --
9 Kroeker -- who've been operating businesses under a CUP
10 for a period of time that now are going to go into a
11 registration tier -- and I don't have any problem with
12 that. I endorse that. But we all know that every time
13 you open up a permit, you open it up for a whole lot of
14 different things. So I think we need to help -- I think
15 Kelly used the word "grandfather." I'm not sure I want to
16 go that strong, but I think there needs to be a mechanism
17 set up where you get notified within the next 30 days
18 who's operating out there, and then you go out and help
19 them. And the ones that are going to keep screwing
20 around, they get -- you know, they don't get that benefit
21 of the help. But I think that will at least keep this
22 fair.

23 And then I think if we do have to go three years,
24 I think that it needs to be a real -- somebody needs to
25 really show a reason to keep these going further. Mr.

1 Gambelin's right. If you've got to get a permit, you can
2 get a permit. You have to work at it and get it done, not
3 make it just one of ten things that you're doing at any
4 given time.

5 So I think we have to be cognizant of that timing
6 issue.

7 CHAIRPERSON PAPARIAN: That does lead us to the
8 next issue then, is the timing issue. And I think we've
9 had several suggestions here. We've heard two years,
10 three years, an indefinite extension possible by the LEA,
11 a time limited extension possible by the LEA.

12 And just to put something out there for
13 discussion, what about something like a three-year time
14 limit with a two-year extension possible with the findings
15 by the LEA that we talked about where they're truly moving
16 toward getting a full permit and just were unable to do it
17 in that time period.

18 COMMITTEE MEMBER CANNELLA: Mr. Chairman.

19 I believe that a three-year period is sufficient,
20 particularly with what most of us are talking about,
21 providing local assistance. I don't believe that a
22 two-year exemption ought to be at the discretion of the
23 LEA. If people want to move to an extension, I think it
24 ought to be a Board action as opposed to a local.

25 COMMITTEE MEMBER JONES: Mr. Paparian?

1 CHAIRPERSON PAPARIAN: Mr. Jones.

2 COMMITTEE MEMBER JONES: I would -- I understand
3 what -- the three years I think should be enough. But,
4 you know, maybe if there's a step before that that says
5 that the operator has filled out all of their required
6 paperwork and got, you know -- and turned it into the LEA
7 within six months, then if CEQA or some other issue or
8 local ineptness prevents this permit from moving through,
9 at least the operators have put forward a permit
10 application within a six-month period. And then if
11 extensions are warranted, they're warranted, because
12 you've said, "Get your work done." You can't wait two
13 years and then expect another three years worth of
14 extensions -- or three years, sorry -- three years and
15 another two years.

16 But how about if you said, "Here, you have six
17 months. Get your application in." It doesn't mean
18 they're all going to be permitted within a year. But if
19 somebody files a CEQA lawsuit or something else, they will
20 have at least put forward that thing in a timely period.
21 And then the extension becomes as a result of a local
22 action, "We're going to give you an extension."

23 Does that make sense?

24 CHAIRPERSON PAPARIAN: So you would have a time
25 certain for submitting the application, but then an

1 indefinite time for obtaining the permit?

2 COMMITTEE MEMBER JONES: Yeah.

3 CHAIRPERSON PAPARIAN: Because at that point it's
4 out of the control of the operator?

5 COMMITTEE MEMBER JONES: Right. Because I think
6 that if we let operators wait three years, and then
7 another thing comes up, they'll be five years out. But
8 give them six months. Somebody files a CEQA lawsuit, it's
9 not the operator's fault. So, you know -- but get it in
10 in six months and you should be okay. And then they can
11 take the time.

12 COMMITTEE MEMBER CANNELLA: But are you saying
13 that if they do it within six months, there is no time --
14 you just don't have three years, and then you have to
15 reapply again?

16 COMMITTEE MEMBER JONES: No.

17 COMMITTEE MEMBER CANNELLA: Well, that's what I
18 understood you to say, that it was indefinite. If you
19 make the application within six months and if it takes ten
20 years for it to process, then that was okay.

21 COMMITTEE MEMBER JONES: See, that's why you guys
22 are here.

23 Okay. Because if they get it within six
24 months -- what I don't want to see these people get hung
25 up with is if somebody files a CEQA lawsuit and we have an

1 arbitrary -- you know, we've said three years total, and
2 that might be a five year for determination, I don't think
3 they should be precluded, you know, from being in
4 compliance because of that lawsuit. But I don't think it
5 could be indeterminate. So you need to help me with an
6 idea that -- in one respect if everything is right within
7 six months, you've triggered the clock. You'll have a
8 permit within 120 days. You'll have a permit.

9 If something comes up, then we need to give them
10 the opportunity. So it's --

11 COMMITTEE MEMBER CANNELLA: Well, that's what I
12 was saying, that rather than having an automatic extension
13 aboard to allow for an indefinite period to work through
14 the process, if you gave a three year and then if you
15 don't have your permit within three years and you can show
16 that it wasn't anything that you didn't do or was beyond
17 your control, then there ought to be some kind of an
18 appeal process.

19 But I just don't know that I feel comfortable
20 just letting the LEA do it. I mean we're setting the
21 regulations right here. Why wouldn't it be responsible to
22 review for an extension beyond three years?

23 COMMITTEE MEMBER JONES: That'll work. But I'd
24 like you to think about that idea. If they get it in --
25 they got every right to our protection. And if they take

1 forever, you know, I'm not so sure I want to help them,
2 you know.

3 CHAIRPERSON PAPARIAN: Mr. de Bie, you wanted to
4 say something?

5 COMMITTEE MEMBER MEDINA: Excuse me.

6 CHAIRPERSON PAPARIAN: Oh, Mr. Medina. Sorry.

7 COMMITTEE MEMBER MEDINA: I'd have to agree with
8 the speaker that said if you give people three years, they
9 will take three years to get started. I think a one year
10 with a reasonable time extension, following along some of
11 the lines that Mr. Jones was laying out. I think that
12 would make sense, rather than wait three years and then
13 some people start to process and during the three-year
14 period some operators would increase their daily tonnage.

15 CHAIRPERSON PAPARIAN: Mr. DeBIE, you wanted to
16 add something. Let me also ask something of you too.
17 That is, that I'm not clear, in filling out the full
18 permit application. Is it merely filling it out or do
19 they have to have done some studies or CEQA-related stuff
20 in order to make it a complete application?

21 MR. DeBIE: Part of the -- for the full permit,
22 part of the requirement relative to CEQA is that the
23 applicant provide some evidence of CEQA compliance or a
24 status report of where they are with CEQA. And if they
25 provide one or the other, then that aspect is deemed

1 complete in the application. So they don't need to have
2 CEQA completed prior to applying for the permit. It's
3 recognized that the application process and processing of
4 the permit can be concurrent to the CEQA process, and
5 that's why that stipulation is put in there.

6 I hope that answers that question.

7 What I wanted to point out is staff's
8 understanding from discussion with stakeholders of why a
9 phase-in period is required, whatever length; and that is
10 to some extent allow time to hire consultants over time to
11 assist them in the process. That they wouldn't
12 necessarily have the capital available to them to work a
13 six-month application process, that they may need to do
14 one step at one time, get some more money together to go
15 on to the next step. So they'll need additional time to
16 do that.

17 I think based on the discussion just now, some
18 assurances could be made in terms of determining who could
19 go beyond a phase-in period, two year, three year,
20 whatever it might be, is the good faith effort in
21 submitting an application. And if they haven't shown at
22 some time certain in that phase-in a good faith effort in
23 submitting an application, then they wouldn't qualify for
24 any extensions, perhaps is one way of doing it. But if
25 they can demonstrate that they have to the best of their

1 ability worked through the process and there are things
2 beyond their control, then they would qualify for an
3 extension.

4 So it wouldn't be anyone would have that
5 extension available to them. Only the ones that can
6 demonstrate that they've worked through the process.

7 But I think that demonstration needs to show up
8 later in the phase-in period as opposed to the beginning.
9 Otherwise you cancel out the need to have a longer time to
10 go through the permitting process because of the economics
11 involved.

12 CHAIRPERSON PAPARIAN: Okay. So let's review
13 where we're at here.

14 There's an idea on the table to have a period for
15 everybody over 100 tons, they'd be required to get a
16 registration permit in a fairly short time period.
17 Provided they were, you know, agreeing to pursue a full
18 permit, they would have a period of time -- I think I
19 heard six months and a year, but I think a year kind of
20 seemed more comfortable to people -- a year to submit a
21 permit application, a full permit application. An
22 additional two years to obtain that full permit. And
23 provided that they were, you know, making the good faith
24 effort to obtain it and meeting whatever other conditions
25 that indicated that they are truly on the path to

1 achieving that permit, allowing an extension beyond the
2 three years. We had a couple thoughts on that. One was
3 at the discretion of the LEA. One was with the approval
4 of this Board.

5 So --

6 COMMITTEE MEMBER CANNELLA: Let me just -- I'm
7 certainly not hard fast on that. My reason for offering
8 that as a way to get an extension was to address the
9 issues that were raised by San Jose about local politics,
10 about what plays into it. It seems to me that if it came
11 to the Board, that you eliminate a lot of that local
12 politics stuff. And we make a decision based on what's
13 right and wrong and what the best effort is as opposed to
14 being lobbied locally about whether you should or
15 shouldn't get an extension.

16 CHAIRPERSON PAPARIAN: Scott, did you have
17 something to say about that?

18 ACTING DEPUTY DIRECTOR WALKER: No, I think -- I
19 asked Mark. I mean --

20 MR. DeBIE: We're trying to -- sort of crafting
21 an idea here. So I just wanted to make sure that, you
22 know, we're hearing the same thing as you're saying.

23 One year after the effective date of these
24 regulations someone would need to apply for a full permit.
25 Now, in between there they're applying for a registration

1 permit and being issued a registration permit. So they're
2 doing basically two things during half the year.

3 So just wanted to be aware of that.

4 And then if they have submitted the application
5 at the end of the year, then they get another two years to
6 complete that application, resulting in the issuance of a
7 permit.

8 If they fail to submit an application after one
9 year -- I think we have to look at that contingency.

10 CHAIRPERSON PAPARIAN: Then --

11 COMMITTEE MEMBER JONES: I think they need to be
12 shut down. They're operating without a solid waste
13 facility permit.

14 MR. DeBIE: Okay. So they haven't met this
15 requirement for the phase-in --

16 CHAIRPERSON PAPARIAN: The registration permit
17 continuance is contingent on pursuit of the full permit
18 application.

19 MR. DeBIE: And it would just be a submittal of
20 the application. Do we want to make a statement about how
21 complete that application needs to be?

22 The LEA can accept an incomplete application.
23 It's already addressed in the regulations. If they do
24 accept an incomplete application, with a regular full
25 permit it goes into a 180-day period for the operator to

1 continue working with the LEA to complete that
2 application. If at the end of the 180 days the LEA is
3 unable to deem it complete, then the application is
4 returned and they start again.

5 So that's the current process with full permits.

6 CHAIRPERSON PAPARIAN: Yeah, I'm not -- Mr. Jones
7 is indicating that will work. I'm not quite sure. You're
8 dealing with people who have never gotten an
9 application -- never gotten a permit before in some cases.

10 ACTING DEPUTY DIRECTOR WALKER: I'd like to make
11 a suggestion too, that we might take what you've given us
12 and try to work out something by the time of the full
13 Board meeting. I think we've got quite a bit -- if that
14 would help.

15 CHAIRPERSON PAPARIAN: Yeah.

16 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: I think
17 let's just go as far as we can.

18 ACTING DEPUTY DIRECTOR WALKER: I think Mark
19 needs a little more guidance to do that. But I'm thinking
20 that we get to a point where we have enough, we can --

21 CHAIRPERSON PAPARIAN: I think the concept that I
22 think we're all in agreement on is that they submit the
23 application and are making every good faith and diligent
24 effort to get the permit. And there are, you know, many
25 of the folks in this room who have gotten permits in the

1 past I think have had to pull the permit back at some
2 point and resubmit.

3 So, you're asking if we should allow for that in
4 some fashion. And I think my response would be, yes, as
5 long as it -- you know, by all appearances there is an
6 effort to pursue getting that full permit.

7 COMMITTEE MEMBER JONES: Mr. Paparian?

8 CHAIRPERSON PAPARIAN: Mr. Jones.

9 COMMITTEE MEMBER JONES: I would agree with you.
10 There's just one thing. Everybody that's pulled a permit
11 back has lived by existing terms and conditions within an
12 existing permit. They never were allowed to operate with
13 what they wanted to get in a new permit. So I think --
14 and so what I'm saying is if these facilities have
15 identified themselves and they have put the work through,
16 I want to give them time. I mean I'm trying to be as fair
17 as I can be, as is every member here. But I think at some
18 point we have to say, if in that -- and I didn't realize
19 it. So they have 180 days after they've submitted to get
20 a complete package. So if they're not complete, then the
21 process ends and they start all over again.

22 Okay. Then my question is, under AB 59 -- and it
23 is 59, right, that says you can't operate an unpermitted
24 facility?

25 MR. DeBIE: Yes.

1 COMMITTEE MEMBER JONES: Do we do a notice and
2 order to stop operations? Because there has to be a
3 consequence to not doing this. There has to be a
4 consequence. And the consequence to me would seem to be
5 either revert to existing conditions; or if you weren't
6 permitted in the first place, then you stop until you get
7 it done. That'll make people get this stuff done.

8 MR. DeBIE: The way I'm viewing how this process
9 is coming together, there will be time certain when
10 they're expected to get a registration permit. And if
11 they fail to get a registration permit timely, then I
12 think it's appropriate for the LEA to issue a cease and
13 desist and take action that way.

14 If, however, they do achieve in getting a
15 registration permit, and now we're talking about the
16 phase-in on the full, the registration would be the
17 operating document for that facility to fall back on if
18 they fail to get the full permit in a timely fashion. So
19 they couldn't sort of "Well, I've applied for a thousand,
20 but I have a registration permit that describes me as
21 500," they wouldn't be able to go to a thousand until
22 they're approved to do that.

23 COMMITTEE MEMBER JONES: That would be consistent
24 with what I said. And then, you know -- but you still
25 have a requirement to get a full permit.

1 MR. DeBIE: And then I would indicate that at the
2 end of whatever time period, it looks like we're still
3 around three years, that if they still failed to get the
4 full permit and aren't able to show a good faith effort,
5 then it's more than appropriate to do the cease and desist
6 order at that time.

7 CHAIRPERSON PAPARIAN: At that time, yeah.

8 COMMITTEE MEMBER JONES: Then that's cool.

9 MR. DeBIE: And the reason would be that you were
10 required to get a full permit, you don't have a full
11 permit, and so we're, you know, telling you to stop. Not
12 continue as a registration permit, but just stop
13 completely.

14 CHAIRPERSON PAPARIAN: But if they are in all
15 good faith pursuing the permit and three years runs out,
16 they could get an extension. And, again, we're back to
17 the point of is it the LEA or is it us? If it's us, is it
18 the full Board or is it the Executive Director?

19 MR. DeBIE: If I could add in maybe a mechanism.

20 The LEA could issue an order at that time, saying
21 you know, "We expected you to get there. You didn't."
22 And not a cease and desist order, but an enforcement order
23 saying, "Operate under your registration permit and this
24 order until you're able to do that." The Board has a
25 mechanism, staff has a mechanism to review those orders

1 and give input on them. And then per your request,
2 Chairman Paparian, we report on those orders. And so
3 there would be an existing mechanism to get the Board at
4 least information about what's happening there. And then,
5 you know, that would allow some feedback through staff to
6 the LEA on what's appropriate and not appropriate. The
7 Board would then have the ability to make a determination
8 of appropriate or inappropriate enforcement action and go
9 down the enforcement reg mechanism.

10 So there are some existing mechanisms that we
11 could refer to in the case that an extension's required.

12 CHAIRPERSON PAPARIAN: Mr. Jones.

13 COMMITTEE MEMBER JONES: Would that LEA notify
14 them in like two and a half years, tell them in two and a
15 half years that, you know, "You've been going down this
16 path. You have haven't produced. You got six months to
17 get it done; otherwise, you're done."? Rather than wait
18 till three years and then let that drag on for another
19 year? I mean, you know, it seems to me two and a half
20 years into this thing we ought to be able -- an LEA that
21 hasn't received anything ought to have an expectation that
22 get it done in six months or we're done.

23 MR. DeBIE: I think an LEA could notice them and
24 also require them to take certain steps in order to comply
25 with this requirement beforehand, because knowing that it

1 will take X amount of months to go through the permit
2 process.

3 COMMITTEE MEMBER JONES: That would work with me,
4 if it would with the other members.

5 COMMITTEE MEMBER CANNELLA: That's fine.

6 CHAIRPERSON PAPARIAN: I'm seeing nods.

7 Okay. Now, from here -- actually we have a
8 couple other little things related to this.

9 COMMITTEE MEMBER CANNELLA: Yeah, Mr. Chairman,
10 one issue.

11 It's my opinion that the folks who are in the
12 system right now have the registration period and then
13 they have the permit period. But we need to set a time
14 certain of that. If I want to start this business next
15 month, that I don't get the same rights and privileges.
16 If I'm a business person and they -- the city imposes a
17 meal tax, I'll make a decision whether I want to go into
18 business, because a meal tax -- I don't believe that we
19 ought to have this thing open-ended that somebody six
20 months down the road decides they want to get into C&D,
21 that they can go and get a registration for six months and
22 then do the permit. I think at some point you start with
23 a permit -- a full permit.

24 MR. DeBIE: And right now the way we've
25 constructed the phase-in is at the time the regs become in

1 effect any existing facilities would be allowed to go
2 through the phase-in. So the day after the regs go in
3 effect if you come into existence, you would have to get a
4 full permit in order to continue operating.

5 COMMITTEE MEMBER CANNELLA: That's fine.

6 CHAIRPERSON PAPARIAN: I'm seeing nods on that
7 one.

8 There were a couple of specific wording items
9 that some of the people testifying mentioned. Mr. Munoz
10 mentioned the -- adding the I think it was supplies to
11 that one section.

12 MR. DeBIE. Right. And it's staff's
13 understanding, and it was described in testimony, that at
14 many of these construction sites there's a trailer that's
15 used as the office, and that there is waste generated
16 outside that trailer. And stakeholders are reading the
17 regulations that -- in a way that it would exclude any
18 waste generated from that trailer as being C&D waste. And
19 the example that's being used is blueprints. And it's
20 true that Mr. Bledsoe and I don't fully agree on how to --
21 whether that waste would be included in C&D or not.
22 Certainly if it is included in the C&D debris definition,
23 it would have to meet all the requirements of C&D debris
24 in terms of putrescibles and the list of materials in
25 there.

1 So I think they're seeking clarity that things
2 like blueprints or other kinds of materials that aren't
3 tools or materials used in the construction, in the
4 structure itself, are also an aspect of C&D site and the
5 waste generated from that site

6 CHAIRPERSON PAPARIAN: I'm certainly comfortable
7 with that.

8 COMMITTEE MEMBER JONES: I just have one thing.
9 Supply scares me because it's very much like the Mining
10 Act where reclamation was anything that was used in the
11 operation of a mine could be landfill at that mine. That
12 meant tractors, drums of oil, excavators, you're neighbor.
13 You know, it's a dangerous slippery slope we go to,
14 because we're thinking trailer. But what if it's a
15 Brownsfield's that has a ten-story building added, and
16 they headquarter their construction or their redevelopment
17 of that Brownsfield and tear all the buildings down from
18 the ten-story building? Aren't those to people in fact
19 supplies? I think C&D is C&D. I mean it makes me nuts
20 that we even have -- that we don't have a zero policy on
21 food waste, because food waste has never been part of C&D.
22 But to say supplies is a mistake, and I think we ought to
23 make sure it's not in there, personally.

24 CHAIRPERSON PAPARIAN: Other thoughts on that?

25 COMMITTEE MEMBER CANNELLA: I just have the same

1 concern about the definition of supplies. Supplies can be
2 anything. Even if you say on-site supplies, it still
3 could be anything. So I just don't know how you regulate
4 and how you define supplies. It's certainly up to
5 definition whomever you ask. Supplies could be anything.
6 And I don't how you define it and how you can regulate it
7 so that we don't have a problem if we put the word
8 "supplies" in the regs.

9 MR. DeBIE: Certainly in times when wording
10 becomes problematic, it's sometimes left to the final
11 statement of reasons to explain what's meant by certain
12 definitions or certain terms in their. So we could
13 address it that way potentially, indicating that -- and
14 we'll look for further direction from stakeholders and the
15 Committee on how limiting or expansive you want to be in
16 terms of trailer wastes being part or not part of it. But
17 we could have a very lengthy explanation in the final
18 statement of reasons about that aspect of the waste.

19 CHAIRPERSON PAPARIAN: Sounds like this one is
20 one where --

21 ACTING DEPUTY DIRECTOR WALKER: We could leave it
22 out for now. And, you know, We'll have another chance for
23 comment period.

24 CHAIRPERSON PAPARIAN: Right. I think we may --
25 I may want to learn a little bit more and see if there's

1 something we can do here.

2 COMMITTEE MEMBER JONES: If we don't have a zero
3 exclusion on putrescibles, they could take a little bit of
4 that ketchup, put it on those drawings, and throw it in.
5 And we'll just call it a putrescible wrapper, you know. I
6 mean I'd feel safer doing that than saying supplies.

7 CHAIRPERSON PAPARIAN: Okay. Process from here
8 is what? Are we going to bring this to the full Board?

9 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: I think
10 it's at the Committee's discretion whether to bring this.
11 You have brought the package to the Board the last two
12 times you've had a conversation about it and shared with
13 the Board the work that the Committee has done. Or you
14 could instead give staff direction with respect to the
15 package.

16 MR. DeBIE: If this does go to the full Board, it
17 would potentially give staff an opportunity to work on
18 modifying the phase-in language to reflect the
19 conversation that you just had about the one year and
20 those sorts of things and be able to present that to the
21 Board.

22 CHAIRPERSON PAPARIAN: Yeah, I'd be inclined for
23 that reason, so that we're clear on what it is we're
24 putting out.

25 COMMITTEE MEMBER CANNELLA: I think it should go

1 in front of the full Board. I'm certainly comfortable
2 with that.

3 CHAIRPERSON PAPARIAN: Okay. Anything else we
4 need to say about the C&D regs?

5 MR. DeBIE: Just to highlight more on process.
6 What we would be asking at the full Board is direction
7 from the Board to do a 15-day comment period on the
8 version that's presented at the Board. And so there will
9 be an opportunity for stakeholders to comment. And we
10 will try our best to schedule a stakeholder meeting during
11 that comment period. And we would be back January or
12 February -- probably February because of the Christmas
13 holiday.

14 ACTING DEPUTY DIRECTOR WALKER: And I think we --
15 right now we have -- at least for this comment period we
16 have a reasonable support from the Committee with the
17 change to that phase-in language so that we feel a little
18 more comfortable coming before the Board that we're on the
19 right track.

20 So I think with that, I think we can go ahead and
21 work that out and present this to the Board and keep
22 pressing ahead.

23 COMMITTEE MEMBER CANNELLA: Mr. Chairman?

24 CHAIRPERSON PAPARIAN: Yes.

25 COMMITTEE MEMBER CANNELLA: Several members

1 talked about providing local assistance. That doesn't
2 need to be part of the reg package. But do we have a
3 statement that this is the intent of this Committee and
4 perhaps the full Board that this is something that we
5 provide?

6 ACTING DEPUTY DIRECTOR WALKER: The direction is
7 already there. I mean we can certainly point that out,
8 that that is the direction and reiterate that, put that in
9 the statement of reasons also.

10 CHAIRPERSON PAPARIAN: Okay. We have two more
11 items on the agenda. We have another meeting, which was
12 supposed to start five minutes ago. We have a court
13 reporter who needs a break.

14 In terms of how we proceed. We have the ADC
15 item. Can we either here this at the full Board or put it
16 over a month?

17 ACTING DEPUTY DIRECTOR WALKER: Well, I would ask
18 the Committee to indulge us. This is a work in progress.
19 It's just a report where we are. We're not there yet as
20 far making any final findings. And we're working --

21 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Maybe you
22 could estimate how long it will take.

23 COMMITTEE MEMBER JONES: Good, we'll accept that
24 report. I'll accept that report, Mr. Paparian.

25 (Laughter.)

1 ACTING CHIEF DEPUTY DIRECTOR NAUMAN: Maybe you
2 could just give the Committee an estimate how long you
3 think the two items are going to take that remain.

4 ACTING DEPUTY DIRECTOR WALKER: I think that we
5 could run through the two items in probably about ten
6 minutes, assuming there's no comments -- may be even less
7 than ten minutes.

8 COMMITTEE MEMBER JONES: Let's take a break for
9 the court reporter.

10 Oh, I'm just going to suggest this. My
11 suggestion would be, let's take a break, come back, give
12 them six minutes, they can run through everything, and
13 then we'll commence with the Special Waste.

14 Does that work for you?

15 CHAIRPERSON PAPARIAN: Works for me.

16 COMMITTEE MEMBER JONES: And, Mr. Cannella,
17 you're on that committee too. Does that work?

18 All right.

19 COMMITTEE MEMBER MEDINA: I would take the items
20 in reverse order so we -- one's an action item. Take care
21 of the action item first.

22 CHAIRPERSON PAPARIAN: Okay. We can do that.

23 Okay. We'll take a ten-minute break, and then
24 we'll take them in reverse order.

25 (Recess.)

1 CHAIRPERSON PAPARIAN: Welcome back. We'll get
2 started again.

3 Okay. Any ex partes?

4 Mr. Jones.

5 COMMITTEE MEMBER JONES: John Cupps, that he's
6 worried about the time given to the ADC issue. And Mark
7 Aprea on noticing. And I know that you've brought the
8 issue up, but noticing of Committee items don't give
9 people a whole lot of time to prepare to come to Committee
10 meetings. Even though it is ten days before our Board
11 meeting, effectively is one day of notice to come in front
12 of a committees. So those were my two ex partes.

13 CHAIRPERSON PAPARIAN: Mr. Medina.

14 COMMITTEE MEMBER MEDINA: None to report.

15 CHAIRPERSON PAPARIAN: Mr. Cannella.

16 COMMITTEE MEMBER CANNELLA: None to report.

17 CHAIRPERSON PAPARIAN: I had a couple. Gary
18 Liss, following up on the C&D regs. Patrick Munoz
19 following up on the C&D regs. I think talked to Mark
20 Aprea. And I also talked to John Cupps.

21 For those of you who are wondering, we are still
22 the Permitting and Enforcement Committee. We've got two
23 more items. We'll be moving on to the Special Waste
24 Committee hopefully in very short order. We're going to
25 take up our two items in reverse order. We're going to

1 take up the action item first, the action item being item

2 G -- no -- I. Sorry. Item 29.

3 Go ahead.

4 ACTING DEPUTY DIRECTOR WALKER: Item I is

5 consideration of continuation of the Permit Application

6 Submittal Schedule Pilot Program. This is Board Item 29.

7 Mark de Bie will give the staff presentation.

8 MR. DeBIE: Thank you.

9 At the request of Chairman Paparian a few months
10 ago, it was asked that staff bring forward an item that
11 would allow the Board to continue the Permit Application
12 Submittal Schedule Pilot Project. This is a pilot project
13 that approved to the Board last December that lays out
14 certain timeframes for submittal of applications and
15 submittal of proposed permits.

16 An extension of the pilot for an additional year
17 is what's being requested. This will allow staff
18 additional time to collect data on applications that have
19 been submitted, but that have not yet made it all the way
20 through the process leading to a Board action. It will
21 also allow staff time to collect all of the data at the
22 end of a full one year cycle of application submittals to
23 collect the data, analyze the data, and come back to the
24 Board with a recommendation on possible regulations to
25 address application submittals and proposed permit

1 submittals.

2 Just real quick, so far staff have been tracking
3 23 applications have been submitted since January 2002.
4 We've seen an average of 49 days between the time of when
5 the proposed permit is submitted and the Board's need to
6 take action. And this is an improvement in terms of
7 overall time than we've seen the same time last year or
8 prior to the pilot project.

9 So staff would recommend that the Committee
10 approve Resolution 2002-772, continuing the Pilot
11 Program -- Permit Application Submittal Schedule Pilot
12 Program for an additional one year.

13 CHAIRPERSON PAPARIAN: Okay. I have one speaker
14 slip from Mr. Edgar. Is he in the room?

15 Recognizing you don't want to snatch defeat from
16 victory, I hope you'll be quick.

17 MR. EVAN EDGAR: Evan Edgar, California Refuse
18 Removal Council on behalf of the permitted industry.

19 We support this recommendation. It has worked
20 for us. We believe it gives the Waste Board staff a
21 maximum amount of time. And times when the Waste Board
22 doesn't have enough time as the operator -- on behalf of
23 the operator, we waive the clock when the permit may not
24 be complete and correct. So the mechanism in place has
25 been working and we believe is an excellent program to

1 continue.

2 Thank you.

3 CHAIRPERSON PAPARIAN: Thank you.

4 Is there any question?

5 Or a motion.

6 Mr. Medina.

7 COMMITTEE MEMBER MEDINA: Thank you, Chair
8 Paparian. I'd like to move this Resolution 2002-772,
9 approval of continuation of the Permit Application
10 Submittal Schedule Pilot Program.

11 COMMITTEE MEMBER JONES: Second.

12 CHAIRPERSON PAPARIAN: Okay. We have a motion
13 and a second.

14 Secretary, call the roll.

15 SECRETARY FARRELL: Cannella?

16 COMMITTEE MEMBER CANNELLA: Aye.

17 SECRETARY FARRELL: Jones?

18 COMMITTEE MEMBER JONES: Aye.

19 SECRETARY FARRELL: Medina?

20 COMMITTEE MEMBER MEDINA: Aye.

21 SECRETARY FARRELL: Paparian?

22 CHAIRPERSON PAPARIAN: Aye.

23 COMMITTEE MEMBER JONES: Consent?

24 CHAIRPERSON PAPARIAN: Yes, consent.

25 Okay. Last item before public comment is Item

1 28, H on our agenda, regarding ADC.

2 Go ahead.

3 ACTING DEPUTY DIRECTOR WALKER: Thank you.

4 This item is discussion and request for direction
5 regarding investigations of alternative daily cover use.

6 This item represents a work-in-progress. And
7 it's a joint Permitting and Enforcement staff and
8 Diversion Planning and Local Assistance staff effort.

9 These are site specific investigations. We
10 conduct these on an annual basis. They started last year,
11 based of the 2000 year disposal reporting system results.

12 And just wanted to remind the Board, to give you
13 an update, last year there was determined overuse of ADC
14 at two facilities. They have now corrected their
15 reporting and paid the required VOE fees. The other
16 issues were primarily disposal reporting issues. They've
17 been corrected. And so last year was basically -- has
18 basically been resolved.

19 This year we are going through the similar
20 evaluation site specifically. And basically based on some
21 disposal reporting system numbers showing real high
22 percentage of ADC use and other cases of complaints, there
23 were eight facilities that we're in the process of
24 investigating.

25 I want to point out that these investigations are

1 separate from the ongoing rulemaking processes. We're
2 revising our alternative daily cover state minimum
3 standards and we're also revising our disposal reporting
4 system regulations. And that this is separate from those
5 efforts, although they tie in because some of the
6 continued problems we see will really only be addressed
7 through those rulemaking processes.

8 We're not at the point now where we can recommend
9 specific findings on the facilities for the year 2001. We
10 would bring back a future item to the Committee upon
11 conclusion of the investigations. What we can say is
12 again the investigations point out the need to revise
13 those regulation packages for a long-term resolution of
14 some of these issues.

15 We've also noted some operational reporting
16 problems that are in various stages of correction by
17 operators and LEA's under our current requirements.

18 Couple conclusions. You know, we see some things
19 out there, some just basic cover practices that are, you
20 know, at these sites in our investigation that were not
21 appropriate, not enough cover be in place, too much trash
22 and contamination. We saw some problems with mixing and
23 layering of ADC's that we don't feel -- that really are
24 sanctioned under the regs. They're separate. And the
25 revised regulations will correct that problem.

1 We saw some problems with processing, inadequate
2 processing. And then also some reported disposal site
3 information problems that seem to be inconsistent with the
4 permit and the operation. And then, finally, we're still
5 seeing some reporting issues with regard to reporting
6 beneficial uses ADC, and the numbers are not quite
7 matching. And, again, that ties in with a longer term
8 process to revise of regulations and correct some of those
9 problems.

10 Finally, we believe that most of the operators
11 and LEA's are correcting these problems. It appears
12 they're correcting these problems in a cooperative manner.
13 We will follow up with some formal compliance inspections
14 to determine if there is some violation of state minimum
15 standards.

16 And then I'd just like to conclude by
17 recommending that the Committee continue to direct us to,
18 you know, complete these investigations and then bring
19 back our conclusions so that the Committee can consider
20 those. And at that time we may have some findings of
21 overuse that the Committee may agree with. We may not.
22 At this point it's too early to tell. But we'd like to
23 defer to that completion and then bring back that item to
24 the Committee.

25 CHAIRPERSON PAPARIAN: So there's no action

1 needed today, just continue --

2 ACTING DEPUTY DIRECTOR WALKER: No action needed.

3 Just continuing report. Investigation's in progress.

4 We'll be coming back. We'd like to continue to work with

5 the LEA's and operators on the specific facilities.

6 CHAIRPERSON PAPARIAN: Okay. We had two

7 speakers, possibly three, on this item.

8 Teresa Dodge from the Sanitation Districts of the

9 Los Angeles County.

10 MS. DODGE: Teresa Dodge, Los Angeles County

11 Sanitation Districts.

12 What I'd like to respectfully request is when you

13 give direction to staff for continuing with this report,

14 that you discuss or have them present the calculations.

15 In the agenda item, they make reference to calculations

16 being used to make final findings for compliance.

17 If the calculations and not measurements are used

18 to determine compliance, we believe those calculations,

19 the assumptions and all the supporting rationale needs to

20 also be made public for discussion.

21 This sets a precedent. Obviously a southern

22 California operator, we're concerned that this might come

23 our way as well. And if this is going to be used to

24 determine compliance, these calculations and assumptions,

25 we'd like to have those discussed and presented as well.

1 CHAIRPERSON PAPARIAN: Any problem with doing
2 that?

3 ACTING DEPUTY DIRECTOR WALKER: We would do that.
4 I'd like to point out that last April when we came back
5 with the findings on San Bernardino cases, we did
6 establish a protocol. And we are doing it consistent with
7 that. So we would not agree that this is taking
8 precedent. We're doing this consistent with the way the
9 Board was comfortable before. But certainly when we bring
10 this back, it will open it up for discussion and that we
11 can further discuss that at that time.

12 MR. DeBIE: If I may. One of the things we
13 learned from doing this previous investigation was a need
14 to confer with the operator and the LEA about our
15 calculations and our assumptions. And that's one reason
16 why we don't have final conclusions here, because we're in
17 the process of discussing what we did and how we did it
18 with the LEA and site operators for these specific sites
19 as a check and a balance. And so once it goes through
20 that process and there's some validation on the
21 appropriateness of those assumptions and calculations,
22 then we'll be able to fully present them to the Board.

23 ACTING DEPUTY DIRECTOR WALKER: And, again, the
24 idea's we do give the opportunity for the operators to
25 specifically look at our calculations, and they can

1 provide their response and what they see as something
2 worthy of discussion, just like we did last year. So --

3 CHAIRPERSON PAPARIAN: Okay. Mr. Jones.

4 BOARD MEMBER JONES: Mr. Chair I've got a -- as I
5 recall on that agenda item, there were two factors. One
6 was the county believed that their ADC weighed X amount of
7 pounds. Staff believed it weighed something else. And
8 you came to this Board as part of the resolution for us to
9 determine.

10 ACTING DEPUTY DIRECTOR WALKER: Correct.

11 COMMITTEE MEMBER JONES: So I don't think -- I'm
12 not convinced that that's the right way to do this. I
13 think that -- I'm not sure that I know everything that Ms.
14 Dodge is really get at. But I think it's critical. When
15 you look at all the different types of ADC that's being
16 used, they all have a different weight value. And
17 depending upon how big a working face and what it's
18 covering and what's going on, you could have a real, real
19 light weight stream going into a landfill as MSW, but have
20 a heavy ADC. And it's going to show a disproportionate
21 use of ADC to what's coming in. That's going to require
22 more discussion. You know, because otherwise it's going
23 to distort what's actual. Because the real issue is, if
24 you've got sludge or something that's been dried out and
25 you're going to use that as ADC and it's going over a

1 light weight and you're only putting down six inches or
2 eight inches and compacting it in, it's going to have a
3 much higher number than leafy green waste even though it's
4 absolutely the appropriate use of that material and it's
5 been placed appropriately.

6 I think we need to have more discussion about
7 this. Otherwise the message coming out of here could be
8 problematic from the standpoint that that -- it's like all
9 numbers. They could be used any way they want. We better
10 be talking about things like working face and how much
11 garbage and things like that. Otherwise we're going to be
12 doing a big disservice.

13 ACTING DEPUTY DIRECTOR WALKER: And, yes, I
14 agree, those calculations will be brought forth. And they
15 will be different this year because we're looking at
16 different types of ADC's, not just green waste. So, yes,
17 that's true.

18 CHAIRPERSON PAPARIAN: Okay. And, Ms. Dodge, did
19 you have anything else?

20 MS. DODGE: Yes, if I could add.

21 I don't want to preclude the discussion with the
22 individual operators, LEA's. We'd want the same thing if
23 it was at our site. The question is more the process of
24 the calculations and how the evaluation is done. And that
25 is a policy issue, that that is used to assess compliance.

1 And that should be out for public review.

2 MR. DeBIE: I need to point out that we're not to
3 the point of assessing compliance using any methodology at
4 this time. We've done investigations, which are different
5 than inspections. We've collected data. We're discussing
6 that with the LEA and the operator to again validate
7 whether or not what we see and what we've concluded is
8 correct. Once that process is done and we're all reading
9 from the same page, then we'll return to the site and use
10 the agreed-upon methodology between LEA's and operators
11 and Board staff to assess the site. And at that time once
12 we've established that methodology and formed some
13 findings, we'll be bringing that back to the Committee
14 with the report. And anyone else will have that available
15 to review and comment on.

16 So we're not assessing compliance at this time.

17 MS. DODGE: We'd like to be involved in a
18 discussion of establishing the methodology.

19 COMMITTEE MEMBER JONES: Mr. Chair?

20 CHAIRPERSON PAPARIAN: Mr. Jones.

21 BOARD MEMBER JONES: What is the -- I mean, how
22 are you going to determine what each one of these
23 commodities -- what your parameters are going to be? I
24 mean how are you going to do that?

25 ACTING DEPUTY DIRECTOR WALKER: Well, there's

1 different approaches. I mean as far as overall cover
2 usage you should look at a working face size approach and
3 extrapolate that over, you know, like an annual basis or
4 use a waste-to-cover ratio that engineers use. When you
5 use different types of ADC's, you look at the type of ADC
6 and you try to establish either the published values or
7 generic conversion factors or size specific. And so, you
8 know, you have to take into consideration the individual
9 ADC types and their conversion factors. You can't just
10 have just a, you know, 10 percent and that's it, because
11 you're going to have some that are more heavy, then others
12 are going to be lighter. And so that has to be factored
13 into the calculations in order to make it have some
14 scientific credibility.

15 COMMITTEE MEMBER JONES: Mr. Chair?

16 CHAIRPERSON PAPARIAN: Mr. Jones.

17 COMMITTEE MEMBER JONES: Under your leadership
18 we've had some awfully good workshops held at this
19 Committee, including the last one on C&D, which was
20 semi-painful for all of us. But at least we got a lot of
21 work done.

22 This may be one that you might want to think
23 about having a workshop on to talk about all the different
24 parameters, because this can just be -- this is just too
25 big of an issue and there are too many variables to not

1 have a more of an open discussion and talk about different
2 types and what those historic weights are.

3 CHAIRPERSON PAPARIAN: It's a good suggestion.
4 Let me work with the staff. And why don't we maybe when
5 we're fresher at our next meeting figure out whether and
6 how to approach a possible process.

7 Was that it, Ms. Dodge?

8 MS. DODGE: Yes. Thank you.

9 CHAIRPERSON PAPARIAN: Mr. Evan Edgar.

10 MR. EVAN EDGAR: Evan Edgar on behalf of the
11 California Refuse Removal Council.

12 We believe this is a process that should be taken
13 forward with a workshop. We believe that our problem
14 statement would be the level of processing part of
15 placement. It's not only a racial issue, but we believe
16 that the material should be processed prior to placement.
17 I believe that the investigations are showing that at
18 certain landfills that processing is not taking place.

19 So we would go with Option Number 1 to stay the
20 course. I think this would be your foundation for the
21 draft regulations to support specifications and to support
22 processing prior to placement.

23 Thank you.

24 CHAIRPERSON PAPARIAN: Okay. Thank you.

25 I think Option 1 was basically for the staff to

1 continue working on this and let us know how it's going.

2 Did anybody else want to speak on this?

3 No. Okay.

4 Any public comment?

5 Okay. If not, this meeting of the Permitting and
6 Enforcement Committee is adjourned.

7 I'm sorry that we went over by 40 minutes. And
8 hopefully that won't inconvenience folks too much for the
9 next meeting.

10 (Thereupon the California Integrated Waste
11 Management Board, Permitting and
12 Enforcement Committee adjourned at 3:40 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Integrated Waste Management Board,
7 Permitting and Enforcement Committee meeting was reported
8 in shorthand by me, James F. Peters, a Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 14th day of December, 2002.

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23 JAMES F. PETERS, CSR, RPR
24 Certified Shorthand Reporter
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